EIGHTIETH DAY
(Saturday, May 29, 1993)

The Senate met at 11:00 a.m. pursuant to adjournment and was called to order by Senator Brown.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Carriker, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Parker, Patterson, Ratliff, Rosson, Shapiro, Shelley, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

A quorum was announced present.

Senate Doorkeeper James Morris offered the invocation as follows:

> Our Father, the clock and the calendar remind us that this 73rd Session of the Legislature will soon end, and that there is much to be decided in the remaining hours. Our prayer today is one of appreciation for those who have shared their strengths and skills, debated and compromised, worked tirelessly and unselfishly to ensure state government will be in place and continuing to serve the people of our state. Bless the work and the workers. We pray this will be a good day for the Members and the Senate leadership. Amen.

On motion of Senator Harris of Dallas and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

PROCLAMATIONS FROM THE GOVERNOR

The following Proclamations from the Governor were read and were filed with the Secretary of the Senate:

PROCLAMATION
BY THE
GOVERNOR OF THE STATE OF TEXAS

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 2612** because of the following objections:

> This bill would add a member of the Texas Transportation Commission and the Commissioner of Agriculture to the Coastal Coordination Council. Adding new members at this time risks slowing the process of developing the Coastal Management Program and revisiting fundamental decisions that the Council has already made. After months of effort, the agencies involved in Coastal Management Program planning have recently recommended that the Council approve an extensive policy development process. This process will begin in the fall. Adding new members to the

Council could subject this process to reexamination and revision and could jeopardize the goal of producing a program that can be approved by the Council in February 1994.

The two members that would be added by this bill do not have as their primary mission the management of the state's natural resources. However, both the Transportation Commission and the Department of Agriculture, along with other natural resource agencies such as the Texas Water Development Board and State Soil and Water Conservation Service, have been active participants in the development of the program since 1991. They currently work closely and productively with the Council through a state agency task force and several work groups devoted to specific issues. Their continued involvement will help shape the Coastal Management Program and will be critical to its success.

The Secretary of State will take notice of this action and will notify the Members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 25th day of May, 1993.

/s/Ann W. Richards
Governor of Texas

/s/John Hannah, Jr.
Secretary of State

PROCLAMATION
BY THE
GOVERNOR OF THE STATE OF TEXAS

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 360** because of the following objections:

This bill would allow a foster parent who has had actual possession of a child for a period of one year and, in the case of a court-ordered placement, as little as six months, to bring a suit to terminate the rights of the natural parents and adopt the child. According to an interpretation for the United States Department of Health and Human Services, a state statute that allows foster parents to petition for termination of parental rights would be contrary to the intent of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272). Therefore, this bill becoming law would result in the loss of a significant amount of federal funds for Texas.

The Secretary of State will take notice of this action and will notify the Members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 28th day of May, 1993.

/s/Ann W. Richards
Governor of Texas

/s/John Hannah, Jr.
Secretary of State

SENATE BILL 421 WITH HOUSE AMENDMENTS

Senator Carriker called **S.B. 421** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **S.B. 421** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the rates of a gas utility.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3.05(e), Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) The railroad commission shall hear the appeal de novo based on the test year presented to the municipality, adjusted for known changes and conditions that are measurable with reasonable accuracy, and by its final order, which shall be entered not more than 185 days from the date the appeal is perfected, the railroad commission shall fix such rates that the municipality should have fixed in the ordinance from which the appeal was taken. In the event that the railroad commission fails to enter its final order within 185 days from the date the appeal is perfected, the schedule of rates proposed by the utility shall be deemed to have been approved by the commission and effective upon the expiration of the 185-day period. Any rates, whether temporary or permanent, set by the railroad commission shall be prospective and observed from and after the applicable order of the railroad commission. However, [~~except~~] interim [~~rate~~] orders establishing temporary rates necessary to provide the utility the opportunity to avoid confiscation during the 185-day period may be made effective [~~beginning~~] on the date of filing of the [~~a~~] petition for review with the railroad commission [~~and ending on the date of a final order setting rates~~]. The railroad commission may order a refund with interest of amounts collected under temporary rates through a payment to customers from whom those amounts were collected or through a payment or credit to each affected class of customers.

SECTION 2. Section 5.06, Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.06. COMPONENTS OF NET INCOME. (a) The components of net income used to establish just and reasonable rates shall be determined in accordance with this section.

(b) "Net income" means the total revenues of the gas utility from gas utility service less all reasonable and necessary expenses related to that gas utility service as determined by the regulatory authority. The regulatory authority shall determine those expenses and revenues in a manner consistent with Subsections (c)-(e) [~~(b)-(d)~~] of this section.

(c) [~~(b)~~] Payment to affiliated interests for costs of any services, or any property, right, or thing, or for interest expense may not be used to establish just and reasonable rates for gas utility service [~~allowed~~] either as capital costs or as expense related to gas utility service except to the extent that the regulatory authority shall find such payment to be reasonable and necessary for each item or class of items as determined by the regulatory authority [~~railroad commission~~]. Any such finding shall include specific findings of the reasonableness and necessity of each item or class of items included in the establishment of the rates [~~allowed~~] and a finding that the price to the gas utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or class of items, or to unaffiliated persons or corporations.

(d) If an expense is allowed to be included in utility rates, or an investment is included in the utility rate base, the related income tax deduction or benefit shall be included in the computation of income tax expense to reduce the rates. If an expense is disallowed or not included in utility rates, or an investment is not included in the utility rate base, the related income tax deduction or benefit may not be included in the computation of income tax expense to reduce the rates. The income tax expense shall be computed using the statutory income tax rates.

[~~(c) If the gas utility is a member of an affiliated group that is eligible to file a consolidated income tax return, and if it is advantageous to the gas utility to do so, income taxes shall be computed as though a consolidated return had been so filed and the utility had realized its fair share of the savings resulting from the consolidated return, unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns. The amounts of income taxes saved by a consolidated group of which a gas utility is a member by reason of the elimination in the consolidated return of the intercompany profit on purchases by the gas utility from an affiliate shall be applied to reduce the cost of the property or services so purchased. The investment tax credit allowed against federal income taxes, to the extent retained by the utility, shall be applied as a reduction in the rate based contribution of the assets to which the credit applies, to the extent and at the rate allowed by the Internal Revenue Code.~~]

(e) [~~(d)~~] The regulatory authority may promulgate reasonable rules and regulations complying with this section with respect to including and not including [~~the allowance or disallowance of~~] certain expenses in the computation of the rates to be established [~~for ratemaking purposes~~].

SECTION 3. Section 5.08(a), Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) No utility may increase its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed increase. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed increase, the effect the proposed increase is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and other information required by the regulatory authority's rules and regulations. A copy of the statement shall be mailed or delivered at the time of filing to the appropriate officer of each affected municipality. Notice[~~; and notice~~] shall also be given by publication of a notice to the public in conspicuous form and place [~~by placing a notice to the public of the proposed increase once in each week for four successive weeks~~] in a newspaper having general circulation in each county containing territory affected by the proposed increase. The notice shall be published for four successive weeks before the effective date of the proposed increase. In addition to newspaper publication, the utility shall deliver notice of the proposed increase to all affected utility customers by mail or bill insert before the effective date of the proposed increase. Notice shall also be given by delivery of notice [~~and~~] to such other affected persons as required by the regulatory authority's rules and regulations. The [~~However, notwithstanding the above, instead of the~~] publication of newspaper notice is not required [~~contemplated above, a gas utility may provide notice to the public~~] in areas outside the limits of the municipalities[~~,~~] and within the limits of municipalities with a population of less than 2,500 according to the most recent federal census [~~by mailing such notice by United States mail, postage prepaid, to the billing address of each directly affected customer, or by including the notice in such customer's bill in a conspicuous form~~].

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend **C.S.S.B. 421**, page 1, Section 3.05(e) of Article 1446e, by deleting "185" wherever stated and substituting "210".

The amendments were read.

Senator Carriker moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **S.B. 421** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Carriker, Chair; Lucio, Shelley, Rosson, and Turner.

MESSAGE FROM THE HOUSE

House Chamber
May 29, 1993

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 1314**. The House conferees are: Representatives Counts, Chair; Thompson of Harris, Goodman, Sadler, and Hilbert.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE ON HOUSE BILL 284

Senator Barrientos called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 284** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 284** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chair; Armbrister, Carriker, Rosson, and Wentworth.

CONFERENCE COMMITTEE ON HOUSE BILL 1077

Senator Sims called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 1077** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 1077** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sims, Chair; Luna, Zaffirini, West, and Patterson.

CONFERENCE COMMITTEE ON HOUSE BILL 865

Senator Sims called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the

differences between the two Houses on **H.B. 865** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 865** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sims, Chair; Armbrister, Shelley, Bivins, and Truan.

HOUSE CONCURRENT RESOLUTION 177

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 177, Instructing the Enrolling Clerk of the House of Representatives to make a correction to **H.B. 2622.**

The resolution was read.

On motion of Senator Turner and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1719

Senator Montford called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 1719** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 1719** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Montford, Chair; Armbrister, Haley, Ratliff, and Zaffirini.

SENATE RESOLUTION 1150

Senator Sims offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 73rd Legislature, Regular Session, 1993, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **S.B. 172** to consider and take action on the following specific matters:

(1) Senate Rule 12.03(1) is suspended to permit the committee to change the date contained within Section 111.0194(a), Natural Resources Code, by striking "the effective date of this section" and "September 1, 1993" and substituting for both phrases "January 1, 1994".

EXPLANATION. This change is necessary to conform the presumption created for pipeline easements to the effective date provided in the conference committee report.

(2) Senate Rule 12.03(1), is suspended to permit the committee to change the effective date of the bill by striking SECTION 2 of the bill and substituting the following:

SECTION 2. This Act takes effect January 1, 1994.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

EXPLANATION. This change is necessary to change the effective date of the bill to January 1, 1994.

The resolution was read and was adopted by a viva voce vote.

HOUSE CONCURRENT RESOLUTION 172

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 172, Instructing the Enrolling Clerk of the House of Representatives to make a correction to **H.B. 560.**

The resolution was read.

On motion of Senator Barrientos and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

HOUSE CONCURRENT RESOLUTION 176

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 176, Instructing the Enrolling Clerk of the House of Representatives to correct **H.B. 712.**

The resolution was read.

On motion of Senator Lucio and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

(President in Chair)

SENATE BILL 637 WITH HOUSE AMENDMENT

Senator Armbrister called **S.B. 637** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **S.B. 637** as follows:

(1) Strike SECTION 1 (page 1, line 4 through page 2, line 4) and substitute a new SECTION 1 to read as follows:

SECTION 1. Section 54.507, Education Code, is amended to read as follows:

Sec. 54.507. GROUP HOSPITAL AND MEDICAL SERVICES FEES; TEXAS A&M UNIVERSITY SYSTEM. (a) The Board of Regents of The Texas A&M University System may levy and collect from each student at

any institution of higher education which is a part of The Texas A&M University System a compulsory group hospital and medical services fee of not to exceed $25 for each regular semester and not to exceed $12.50 for each term of each summer session. The compulsory group hospital and medical services fee may not be levied unless the levy of the fee has been approved by a majority vote of those students at the affected institution participating in a general student election called for that purpose.

(b) In addition to the fee authorized under Subsection (a) of this section, the Board of Regents of The Texas A&M University System may levy and collect from each student registered at Prairie View A&M University a supplemental group hospital and medical services fee not to exceed $30 for each regular semester and not to exceed $12.50 for each term of the summer session. The supplemental group hospital and medical services fee may not be levied unless the levy of the fee has been approved by a majority vote of the students registered at Prairie View A&M University participating in a general election called for that purpose.

(c) A fee levied under this section at a component institution of The Texas A&M University System may be used only to provide hospital or other medical services to students registered at that component institution.

(2) Strike SECTION 4 (page 3, line 25 through page 4, line 2) and substitute a new SECTION 4 to read as follows:

SECTION 4. (a) The changes in law made by this Act to Section 54.507, Education Code, apply beginning with the fall semester in 1993.

(b) Sections 54.5089 and 54.50891, Education Code, as added by this Act, apply beginning with the fall semester 1993.

The amendment was read.

Senator Armbrister moved to concur in the House amendment to **S.B. 637.**

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 1151

Senator Haley offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 73rd Legislature, Regular Session, 1993, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **S.B. 381** to consider and take action on the following specific matters:

1. Senate Rule 12.03(2) is suspended to permit the committee to delete Part 5 of the bill, which relates to access to and charges for copies of public records by state agencies.

Explanation: This change is necessary to prevent inconsistency with **H.B. 1009**, Acts of the 73rd Legislature, Regular Session, 1993, which contains similar, though not identical, provisions relating to public records.

2. Senate Rules 12.03(1) and (4) are suspended to permit the committee to amend Section 1.01 of the bill to read as follows:

SECTION 1.01. (a) Section 2, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. PURPOSE. The purpose of this Act is to provide a method of financing:

(1) for the acquisition or construction of buildings in Travis County, Texas; and

(2) for the purchase or lease of equipment by state agencies in the executive or judicial branch of state government.

(b) The amendment of Section 2, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), by Section 42, **H.B. 2626**, Acts of the 73rd Legislature, Regular Session, 1993, has no effect.

Explanation: This addition is necessary to prevent inconsistency between the amendment to Section 2, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), in **S.B. 381** and the amendment of the same provision that appears in **H.B. 2626**.

3. Senate Rules 12.03(1) and (4) are suspended to permit the committee to amend Section 1.02 of the bill to read as follows:

SECTION 1.02. (a) Section 9A(a), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The authority may issue and sell obligations for the financing of a lease or other agreement so long as the agreement concerns equipment that a state agency in the executive or judicial branch of state government has purchased or leased or intends to purchase or lease. The authority's power to issue obligations includes the power to issue and sell obligations for the financing of a package of agreements involving one or more state agencies.

(b) The amendment of Subsection (a), Section 9A, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), by Section 43, **H.B. 2626**, Acts of the 73rd Legislature, Regular Session, 1993, has no effect.

Explanation: This addition is necessary to prevent inconsistency between the amendment to Subsection (a), Section 9A, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), in **S.B. 381** and the amendment of the same provision that appears in **H.B. 2626**.

4. Senate Rule 12.03(1) is suspended to permit the committee to amend the bill's caption to read as follows:

relating to the acquisition or provision of goods and services by the state.

Explanation: The change is necessary to conform the caption to the text of the bill, after the provisions relating to public records were removed by the conference committee.

The resolution was read and was adopted by a viva voce vote.

SENATE BILL 1030 WITH HOUSE AMENDMENTS

Senator Armbrister called **S.B. 1030** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1

Amend **S.B. 1030** as follows:

1. On page 3, lines 21 and 22, delete the words "$10 per acre foot of annual water diversion right"

2. On page 3, line 21, add the words or "$500," after the word "exceed."

3. Add the following to Subsection 15.705(a) after the word "bank" on line 23, page 3: "Political subdivisions of the state are exempt from any transfer fees established in this subsection."

Committee Amendment No. 2

Amend **S.B. 1030** as follows:

On page 3, line 8, Subsection (a) delete "A" and replace in lieu thereof with "Up to 50 percent of a".

The amendments were read.

On motion of Senator Armbrister and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1030** by a viva voce vote.

SENATE CONCURRENT RESOLUTION 108

Senator Henderson offered the following resolution:

WHEREAS, The senate has passed **H.B. 7** and returned it to the house of representatives; and

WHEREAS, Further consideration of the bill by the senate is necessary; now, therefore, be it

RESOLVED by the 73rd Legislature of the State of Texas, That the chief clerk of the house be authorized to return **H.B. 7** to the senate for further consideration.

The resolution was read.

On motion of Senator Henderson and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

SENATE RESOLUTION 1149

Senator Ellis offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 73rd Legislature, Regular Session, 1993, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **S.B. 456** to consider and take action on the following specific matter:

Senate Rule 12.03(4) is suspended to permit the committee to add by amendment Section 12.47, Penal Code, to read as follows:

Sec. 12.47. PENALTY IF OFFENSE COMMITTED BECAUSE OF BIAS OR PREJUDICE. If the court makes an affirmative finding under Article 42.014, Code of Criminal Procedure, in the punishment phase of the trial of an offense other than a first degree felony, the punishment for

the offense is increased to the punishment prescribed for the next highest category of offense.

EXPLANATION. This change is necessary to provide enhanced penalties for crimes other than first degree felonies motivated by bias or prejudice.

The resolution was read and was adopted by a viva voce vote.

SENATE BILL 1 WITH HOUSE AMENDMENTS

Senator Zaffirini called **S.B. 1** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1

Amend **S.B. 1** as follows:

(1) On page 6, line 8, before "The", insert "Except as provided by this subsection,".

(2) On page 6, line 8, strike "The" and substitute "the".

(3) On page 6, line 11, after "this article." insert the following: "Provided, that if a criminal charge under Article 6701l-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, results in an acquittal, a suspension under this article shall not be imposed. If a suspension under this article has already been imposed, the department shall rescind the suspension and remove references to the suspension from the computerized driving record of the individual."

(4) On page 24, line 8, after "for" insert "not less than".

(5) On page 24, line 8, strike ", or one year for certain repeat offenders".

(6) On page 24, line 11, after "arrest." insert:
"The officer shall inform the person that if the person gives a specimen designated by the officer, and an analysis of the specimen shows the person had an alcohol concentration of a level specified in Article 6701l-1, Revised Statutes, the person's license, permit, or privilege to operate a motor vehicle will be automatically suspended for not less than 60 days, whether or not the person is subsequently prosecuted as a result of the arrest."

(7) On page 24, line 16, after "of" insert "not less than".

(8) On page 24, line 16, strike ", or one year for certain repeat offenders" and substitute "if the person refuses to give the specimen, or for a period of not less than 60 days if the person gives a specimen designated by the officer, and an analysis of the specimen shows the person had an alcohol concentration of a level specified in Article 6701l-1(a)(2)(B), Revised Statutes".

(9) On page 24, line 22, strike "under Subsection (d) of this section".

(10) On page 24, line 24, strike "under Subsection (i) of this section" and substitute "as provided by law".

(11) On page 28, line 7, after the "." insert "The period of suspension or prohibition under this Act is 180 days if the person's driving record

shows one or more previous alcohol-related or drug-related enforcement contacts, as defined in Article 6687b-1, Revised Statutes, Section 1(2)(B) or (C), during the five years immediately preceding the date of the person's arrest."

(12) On page 28, line 9, after "contacts" insert ", as defined in Article 6687b-1, Revised Statutes, Section 1(2)(A),".

(13) On page 30, line 8, strike "on the highway or on a public beach" and substitute "in a public place".

(14) On page 32, line 21, before "The", insert "Except as provided by this subsection,".

(15) On page 32, line 21, strike "The" and substitute "the".

(16) On page 32, line 25, after "this Act," insert the following: "Provided, that if a criminal charge under Article 67011-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, results in an acquittal, a suspension under this article shall not be imposed. If a suspension under this article has already been imposed, the department shall rescind the suspension and remove references to the suspension from the computerized driving record of the individual."

(17) On page 36, line 24, after "vehicle" insert "except as provided in Section 5(d), Article 6687b-1, Revised Statutes, or Section 2(r), Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes),"

Committee Amendment No. 2

Amend S.B. 1 as follows:

(1) On page 6, line 20, after "(1)" strike "90" and substitute "60".

(2) On page 6, after line 23, and before "(2)" insert "(2) 120 days if the person's driving record shows one or more alcohol-related or drug-related enforcement contacts, as defined in Section 1(2)(B) or (C), during the five years immediately preceding the date of the person's arrest.

(3) On page 6, line 24, strike "(2)" and substitute "(3)".

(4) On page 6, line 25, after "contacts" insert ", as defined in Section 1(2)(A),".

(5) On page 15, strike lines 14-18, and substitute the following:

"SECTION 3. Section 23A, Chapter 173, Acts of the 47th Legislature, Regular Session 1941 (Article 6687b, Vernon's Texas Civil Statutes), as amended by Chapters 473 and 1127, Acts of the 70th Legislature, Regular Session, 1987, is amended by amending Subsection (f) and by adding Subsection (g), to read as follows:".

(6) On page 17, strike the sentence beginning on line 4 and ending on line 8 "An order . . . Statutes," and substitute "When a person's license is suspended under Article 6687b-1, Revised Statutes, or Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), and the person has not had a prior suspension arising from an alcohol-related or drug-related enforcement contact, as defined in Article 6687b-1, Revised Statutes, in the five years immediately preceding the date of the person's arrest, an order under this section granting the person an occupational license to meet an essential need shall be immediately effective. Provided, that the court shall order the petitioner

to comply with the alcohol counselling and rehabilitation program requirements contained in Subsection (g) of this section."

(7) On page 17, line 10, after "Section 1" insert "(2)(B) or (C)".

(8) On page 17, line 12, strike "one year" and substitute "90 days".

(9) On page 17, strike the sentences beginning on line 13 and ending on line 19 "An order . . . Civil Statutes)." and substitute "If the person's driver's license has been suspended as a result of a conviction under Article 67011-1, Revised Statutes, or under Section 19.05(a)(2), Penal Code, in the five years immediately preceding the date of the person's arrest, the order may not be effective before 180 days after the effective date of the suspension."

(10) On page 18, after line 14, and before "SECTION 4", insert the following:

"(g) The court granting an occupational license under this section to a person whose driver's license has been suspended under Article 6687b-1, Revised Statutes, or Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), shall require the person to attend a program approved by the court designed to provide counselling and rehabilitation services to persons for alcohol dependence, which requirement shall be placed in the order granting the occupational license. The program required as a condition of the occupational license shall not be the program provided for in Section 24(g), Article 6687b, Vernon's Texas Civil Statutes, or in Article 42.12, Section 13, Code of Criminal Procedure. The court may require the person to report to the court on a periodic basis to verify that the person is attending the required program. The court may, upon a finding that the person has not complied with the order requiring attendance at the program, revoke the order granting the occupational license. A certified copy of the order revoking the occupational license shall be forwarded to the Department, which shall suspend the person's license for a period of 60 days if the original suspension was under Article 6687b-1, Revised Statutes, or for 120 days if the original suspension was under Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes). The person shall not be eligible for an occupational license during the period of the suspension provided for under this subsection. The effective date of a suspension under this subsection shall be the date on which the order is signed, and such suspension shall be cumulative of the original suspension."

Committee Amendment No. 3

Amend **S.B. 1** as follows:

(1) On page 2, line 18, strike "67011-1(a)" and substitute "67011-1(a)(2)(B)".

(2) On page 3, line 4, strike Subsection (c), and reletter the subsequent subsections appropriately, "(d)" to "(c)" and "(e)" to "(d)".

(3) On page 3, line 25, strike "a copy of a temporary driver's permit, and a driver's license taken by the officer under this section".

(4) On page 4, line 5, strike "and temporary driving permits".

(5) On page 4, line 13, strike "6701l-1(a)" and substitute "6701l-1(a)(2)(B)".

(6) On page 5, line 2, after "(b)" insert "In the event that the officer did not serve notice of suspension of driver's license in accordance with Section 5 of this article,".

(7) On page 5, line 2, strike "The" and substitute "the".

(8) On page 5, line 5, strike "third" and substitute "fifth".

(9) On page 5, line 16, strike "6701l-1(a)" and substitute "6701l-1(a)(2)(B)".

(10) On page 5, line 23, strike "6701l-1(a)" and substitute "6701l-1(a)(2)(B)".

(11) On page 7, line 11, after "imposed.", insert the following: "Provided, that the court shall credit toward the period of suspension of a person's license required by Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes) or by Section 25, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes), a period of suspension imposed under this article if the suspension arose from the same offense for which the court is suspending the person's license. The court may not extend the credit to a person who has been previously convicted of an offense under Article 6701l-1, Revised Statutes, or Section 19.05(a)(2), Penal Code."

(12) On page 7, strike the sentence beginning on line 23 and ending on page 8, line 3, "If the person's . . . is not suspended."

(13) On page 8, line 13, after "section." insert "Provided that in counties with a population of 300,000 or more according to the most recent federal census, hearings shall be held in the county of arrest, unless held as provided in Subsection (c) of this section."

(14) On page 8, line 17, replace the sentence beginning on line 17 and ending on line 21 "The issue . . . place." with the following sentence: "The issue at hearing is whether, by a preponderance of the evidence, the person had an alcohol concentration of a level specified in Article 6701l-1(a)(2)(B), Revised Statutes, while driving or in actual physical control of a motor vehicle in a public place, and reasonable suspicion or probable cause existed to stop or arrest the person."

(15) On page 9, strike the sentence beginning on line 22 and ending on page 10, line 3, "If the person's . . . is not suspended."

(16) On page 10, line 5, after "subsection" insert ", unless a bona fide medical condition be shown which prevents the person from attending the hearing in which case one additional continuance may be granted for a period not to exceed 10 days."

(17) On page 13, line 22, strike "third" and substitute "fifth".

(18) On page 24, line 25, strike "(i)" and substitute "(h)".

(19) On page 25, line 18, strike Subsection (e), and reletter the subsequent subsections appropriately, "(f)" through "(w)" to "(e)" through "(v)".

(20) On page 26, line 23, strike "a copy of a temporary driving permit, a driver's license taken by the officer under this section,".

(21) On page 26, line 25, strike "(f)" and substitute "(e)".

(22) On page 27, line 5, strike "and temporary driving permits".

(23) On page 27, line 11, after "prohibition" insert "In the event the officer did not serve notice of suspension at the time of refusal,".

(24) On page 27, line 11, strike "The" and substitute "the".

(25) On page 27, line 15, strike "third" and substitute "fifth".

(26) On page 28, line 17, strike "(i)" and substitute "(h)".

(27) On page 28, line 21, strike "(i)" and substitute "(h)".

(28) On page 29, strike the sentence beginning on line 6 and ending on line 12 "If the person's . . . is not suspended".

(29) On page 29, line 23, strike "(l)" and substitute "(k)".

(30) On page 29, line 23, after "section." insert "Provided that in counties with a population of 300,000 or more according to the most recent federal census, hearings shall be held in the county of arrest, unless held as provided in Subsection (k) of this section."

(31) On page 30, after line 6, and before "(1)" insert "(1) whether reasonable suspicion or probable cause existed to stop or arrest the person;" and renumber the subsequent paragraphs appropriately, "(1)" to "(2)" and "(2)" to "(3)" and "(3)" to "(4)".

(32) On page 30, line 16, strike "three" and substitute "four".

(33) On page 31, line 10, strike "three" and substitute "four".

(34) On page 31, line 21, strike "(k)" and substitute "(j)".

(35) On page 32, strike the sentence beginning on line 5 and ending on line 10 "If the person's . . . is not suspended."

(36) On page 32, line 12, after "subsection" insert ", unless a bona fide medical condition be shown which prevents the person from attending the hearing in which case one additional continuance may be granted for a period not to exceed 10 days."

(37) On page 32, line 13, strike "(k)" and substitute "(j)".

(38) On page 38, after line 24, and before "SECTION 20.", add the following, and renumber the subsequent section appropriately:

"SECTION 20. Notwithstanding any other legislation enacted by the 73rd Legislature, Regular Session, the reinstatement fees provided for in this Act shall prevail with regard to any suspension imposed under this Act."

Committee Amendment No. 4

Amend **S.B. 1** as follows:

(1) On page 34, after line 3, and before "SECTION 10." insert a new SECTION 10 as follows, and renumber the subsequent sections of the bill appropriately:

"SECTION 10. Subsections (d) and (f), Section 3, Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), are amended to read as follows:

(d) The person who gave a specimen of breath, blood, urine, or other bodily substances in connection with this Act may, upon request and within a reasonable time not to exceed two hours after the arrest, have a physician, qualified technician, chemist, or registered professional nurse of his own choosing draw a specimen and have an analysis made of his blood in addition to any specimen taken and analyzed at the direction of a peace

officer. Such person shall be allowed a reasonable opportunity to contact a person listed in this subsection who may draw blood, provided that a peace officer or law enforcement agency is not required to transport for such testing a person who has requested that a blood specimen be drawn under this subsection. The failure or inability to obtain an additional specimen or analysis by a person shall not preclude the admission of evidence relating to the analysis of the specimen taken at the direction of the peace officer under this Act. A peace officer, any other person acting for or on behalf of the state, or a law enforcement agency shall not be held liable for damages arising from the person's request to have a specimen of his blood drawn under this subsection.

(f) If for any reason the person's request to have a chemical test is refused by the officer or any other person acting for or on behalf of the state, if the person was not provided a reasonable opportunity to contact a person listed in Subsection (d) who may draw blood, or if reasonable access was not allowed to the arrested person for purposes of blood testing by a person listed in Subsection (d) who may draw blood, such fact may be introduced into evidence on the trial of such person."

Committee Amendment No. 5

Amend **S.B. 1** as follows:

(1) On page 10, line 15, after "(h)" insert "Except as provided by this subsection,".

(2) On page 10, line 15, strike "Filing" and substitute "filing".

(3) On page 10, line 15, after "suspension." insert "The filing of an appeal petition stays a suspension if the person's driver's license has not been suspended as a result of any alcohol-related or drug-related enforcement contact, as defined in Section 1, Article 6687b-1, Revised Statutes, in the five years immediately preceding the date of the person's arrest, and the person has not been convicted under Article 67011-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, in the ten years immediately preceding the date of the person's arrest, regardless of whether the prior alcohol-related or drug-related contact or conviction occurred prior to the effective date of this article. A stay shall only be effective for a period of 90 days from the filing of an appeal petition, and upon the expiration of that period the department shall impose the suspension previously ordered by the department. No extension of the stay or additional stay order may be granted by the department or the court."

Committee Amendment No. 6

Amend **S.B. 1** as follows:

(1) On page 6, line 24, after "(2)" strike "one year" and substitute "180 days".

The amendments were read.

On motion of Senator Zaffirini and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1643

Senator Lucio called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust

the differences between the two Houses on **H.B. 1643** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 1643** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lucio, Chair; Montford, Sims, Armbrister, and Rosson.

SENATE BILL 1342 WITH HOUSE AMENDMENT

Senator Harris of Tarrant called **S.B. 1342** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **S.B. 1342** by adding a new Section 2 to read as follows and renumbering the existing Sections 2 and 3 accordingly:

SECTION 2. Subchapter A, Chapter 23, Education Code, is amended by adding Section 23.201 to read as follows:

Sec. 23.201. ELIGIBILITY TO CONTRACT WITH BOARD. (a) The board of trustees of a school district may not enter into a contract with a trustee of the district, the spouse of a trustee, or a business entity in which a trustee or the spouse of a trustee has a significant interest until the trustee's current term has expired or until the trustee has resigned and a successor has been chosen to fill the vacancy created by the resignation.

(b) In this section, the term "business entity" has the meaning provided by Section 171.001, Local Government Code.

(c) For purposes of this section, a person has a substantial interest in a business entity if the person has a substantial interest in the business entity for purposes of Chapter 171, Local Government Code.

(d) This section prevails over Chapter 171, Local Government Code, to the extent of any conflict.

The amendment was read.

Senator Harris of Tarrant moved to concur in the House amendment to **S.B. 1342.**

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 750 WITH HOUSE AMENDMENT

Senator Armbrister called **S.B. 750** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **S.B. 750** as follows:

1) On page 2, line 5, strike the word "initiating" and substitute "requesting that the State Auditor, with the advice and support of the office, initiate";

2) On page 2, line 14, before the word "complete", add "except as provided in Sec. 481.129."; and

3) Add the following new SECTION 2, renumbering subsequent SECTIONS appropriately:

SECTION 2. Amend the Government Code by adding a new Section 481.129 to read as follows:

Section 481.129. Environmental Permits

The office shall consult and cooperate with the Natural Resource Conservation Commission in conducting any studies on permits issued by the Natural Resource Conservation Commission. The Natural Resource Conservation Commission shall cooperate fully in the study and analysis of the procedures involving the issuance of permits by that commission and shall, in any report issued, evaluate all alternatives for improving the process pursuant to the office's responsibilities under Section 481.123. The office and the Natural Resource Conservation Commission shall jointly submit any report required under Section 481.123 of this code.

The amendment was read.

On motion of Senator Armbrister and by unanimous consent, the Senate concurred in the House amendment to **S.B. 750** by a viva voce vote.

SENATE BILL 479 WITH HOUSE AMENDMENT

Senator Shelley called **S.B. 479** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **S.B. 479** as follows:

(1) Strike Section 2 of the bill and substitute the following:

SECTION 2. Part 4, Chapter V, Texas Probate Code, is amended by adding Section 129A to read as follows:

Sec. 129A. SERVICE BY PUBLICATION OR OTHER SUBSTITUTED SERVICE. Notwithstanding any other provisions of this part of this chapter, if an attempt to make service under this part of this chapter is unsuccessful, service may be made in the manner provided by Rule 109 or 109a, Texas Rules of Civil Procedure, for the service of a citation on a party by publication or other substituted service.

(2) Strike Section 4 of the bill.

(3) In Section 5 of the bill, in amended Subsection (a)(8), Section 399, Texas Probate Code, strike "detailed".

(4) In Section 6 of the bill, in amended Subsection (a)(5), Section 404, Texas Probate Code, strike "or" and substitute "[~~or~~]".

(5) In Section 6 of the bill, in amended Subsection (a)(6), Section 404, Texas Probate Code, strike the period and substitute "; or".

(6) In Section 6 of the bill, in amended Subsection (a), Section 404, Texas Probate Code, add the following new Subdivision (7):

"(7) when:

(A) a guardianship of the estate does not exist;

(B) a natural parent of the ward requests the settlement and closing of the guardianship; and

(C) the court finds it is in the best interest of the ward to settle and close the guardianship.".

(7) In Section 7 of the bill, in amended Subsection (a)(9), Section 405, Texas Probate Code, strike "detailed".

(8) In Section 7 of the bill, in amended Subsection (b)(5), Section 405, Texas Probate Code, strike "detailed".

(9) Strike Section 8 of the bill.

(10) In Section 9 of the bill, in proposed Section 504, Chapter XII, Texas Probate Code, strike Subsection (b) and redesignate Subsection (c) accordingly.

(11) In Section 9 of the bill, in proposed Section 506(a), Chapter XII, Texas Probate Code, strike "or an affidavit explaining the will's absence with the application".

(12) In Section 9 of the bill, in proposed Section 508(a)(5), Chapter XII, Texas Probate Code, strike "or the affidavits required by Section 504 of this code are" and substitute "is".

(13) In Section 9 of the bill, in proposed Section 508(c), Chapter XII, Texas Probate Code, strike "person having personal knowledge of the circumstances of" and substitute "witness to".

(14) In Section 9 of the bill, in proposed Section 508(c), Chapter XII, Texas Probate Code, strike ", whether or not the person was a witness to the will".

(15) In Section 9 of the bill, in proposed Section 509(a), Chapter XII, Texas Probate Code, in the last sentence, strike "person to whom the ultimate payment or transfer of an asset is made under the terms of the will is responsible for the asset and" and substitute "devisee of an asset".

(16) Strike proposed Part 2 of Chapter XII, Texas Probate Code, and renumber the subsequent part of the chapter accordingly.

(17) In Section 9 of the bill, in proposed Section 532(a)(4), Chapter XII, Texas Probate Code, after "heirs", everywhere the term appears in Subdivision (4), insert "and devisees".

(18) In Section 9 of the bill, in proposed Section 533, Chapter XII, Texas Probate Code, strike Subsection (a) and substitute the following:

(a) If the court determines on review of the application that emergency intervention is necessary, the court may order funds of the decedent held by an employer, individual, or financial institution to be paid directly to a funeral home only for funeral and burial expenses not to exceed $5,000 as ordered by the court to provide the decedent with a reasonable, dignified, and appropriate funeral and burial.

(19) In Section 9 of the bill, in proposed Section 533, Chapter XII, Texas Probate Code, strike Subsections (b) and (c) and redesignate Subsections (d) and (e) and the reference to Subsection (d) in Subsection (e) accordingly.

(20) In Section 9 of the bill, in proposed Chapter XII, Texas Probate Code, strike Section 534 and renumber the subsequent section of the chapter accordingly.

(21) Strike Section 10 of the bill.
(22) Renumber remaining sections of the bill accordingly.

The amendment was read.

On motion of Senator Shelley and by unanimous consent, the Senate concurred in the House amendment to **S.B. 479** by a viva voce vote.

(Senator Haley in Chair)

CONFERENCE COMMITTEE REPORT ON SENATE BILL 97 ADOPTED

Senator Lucio called from the President's table the Conference Committee Report on **S.B. 97.** The Conference Committee Report was filed with the Senate on Wednesday, May 26, 1993.

On motion of Senator Lucio, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 16 ADOPTED

Senator Brown called from the President's table the Conference Committee Report on **S.B. 16.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Brown, the Conference Committee Report was adopted by a viva voce vote.

SENATE BILL 1410 WITH HOUSE AMENDMENTS

Senator Parker called **S.B. 1410** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment No. 1

Amend **S.B. 1410**, by striking Section 2 and substituting in lieu thereof the following:

Sec. 2. Sections 110.001 through 110.003 and 110.005 through 110.007, Civil Practice and Remedies Code, are amended to read as follows:

Sec. 110.001. DEFINITIONS. In this chapter:

(1) "Charity care or services" means care or services provided by a health care professional, or health clinic under:

(A) Chapter 31, 32, 35, or 61, Health and Safety Code;

(B) the Medicaid program under Chapter 32, Human Resources Code;

(C) a contract with a migrant, community, or homeless health center that receives funds under 42 U.S.C. Section 254b, 254c, or 256; [~~or~~]

(D) Subchapter B, Chapter 311, Health and Safety Code, or 42 U.S.C. Section 1395dd, to the extent the professional or the hospital in which the care or services are provided is not compensated;

(E) an approved family practice residency training program established under Subchapter I, Chapter 66, Education Code, to the extent the professional is not compensated for the services; or

(F) an indigent health care program of a hospital district created under the authority of Article IX, Section 4 through 11, of the Texas Constitution.

(G) a county correctional institution to inmates who are in custody of such county correctional institution operated by such county or under contract with such county.

(2) "Eligible [~~medical malpractice claim~~"] health care liability claim means a [~~medical~~] health care liability claim as defined in article 4509i Vernon's Texas Civil Statutes against a health care professional, or health clinic that [~~who~~] renders charity care in at least 10 percent of the patient encounters engaged in by said health care professional, or health clinic during the policy year in which the claim was made, a claim [~~or~~] against a health center, or a claim against a health care professional who participates in a Medicaid managed care project established under Section 32.041, Human Resources Code.

(3) "Health care professional" means:

(A) a person who is licensed to practice medicine under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);

(B) a person registered by the Board of Nurse Examiners as an advanced nurse practitioner or a certified nurse midwife; [~~or~~]

(C) a person recognized by the Board of Medical Examiners as a physician assistant; or

(D) a health care professional who participates in a Medicaid managed care project established under Section 32.041, Human Resources Code.

(4) "Health center" means a federally qualified health center, as that term is defined by 42 U.S.C. Section 1396d.

(5) "Health clinic" means a clinic or other facility providing health care in conjunction with an approved family residency practice program.

(6) "Insurer" means an insurance company chartered to write or admitted to write and writing health care liability or medical professional liability insurance in this state, the Texas Medical Liability Insurance Underwriting Association (Article 21.49-3, Insurance Code), any self-insurance trust created under Article 21.49-4, Insurance Code, for the purpose of providing health care liability or medical professional liability insurance, or a purchasing group domiciled, registered, and writing health care liability or medical professional liability insurance for health centers in this state. The term "insurer" does not include an institution of higher education that provides health care liability or medical professional liability coverage under Chapter 59, Education Code.

(7) [~~"Malpractice (6) "Medical malpractice~~] Health Care Liability Claim" means a claim or action against a health care professional, [~~or~~] health center, or health clinic [~~alleging one or more negligent acts or omissions in the diagnosis, care, or treatment of a patient and alleging that injury to or death of a patient resulted therefrom, without regard to whether said claim or action is based upon tort or contract principles~~] for

treatment, lack of treatment or other claimed departure from accepted standards of medical care or health care or safety which proximately results in injury to or death of a patient, whether the patients claim or cause of action sounds in tort or contract.

(8) [~~(7)~~] "Patient encounter" means an occasion on which a health care professional, health center, or health clinic renders professional health care services to a patient.

Sec. 110.002. STATE LIABILITY: PERSONS COVERED. In a health care liability cause of action against a health care professional, [~~or~~] health center, or health clinic based on conduct described in Section 110.003, the state shall indemnify the health care professional, [~~or~~] health center, or health clinic for actual damages adjudged against the health care professional, [~~or~~] health center, or health clinic, or which the health care professional, [~~or~~] health center, or health clinic becomes obligated to pay pursuant to a settlement reached in accordance with this chapter.

Sec. 110.003. STATE LIABILITY: CONDUCT COVERED. (a) The state is liable for indemnification under this chapter only if the damages are based on an eligible [~~medical malpractice~~] health care liability claim against a health care professional, [~~or~~] health center, or health clinic in the course and scope of providing professional health care.

(b) The state is [~~not~~] liable for indemnification in a case unless the jury, or if a jury is waived, the trial judge in a cause of action against a health care professional, health center, or health clinic returns a verdict and judgment against the applicable defendant finding that such person or entity committed gross negligence or an intentional act found to be a proximate cause of the damages of the plaintiff [~~for an intentional act or an act of gross negligence.~~]

Sec. 110.005. TIMELY NOTICE TO ATTORNEY GENERAL REQUIRED. The state is not liable for indemnification for damages under this chapter unless the health care professional, [~~or~~] health center, or health clinic against whom the cause of action is asserted:

(1) is covered under a valid professional health care liability or medical liability insurance policy that is issued by an insurer and that provides coverage for the [~~medical malpractice~~] health care liability claim that is the subject of the claim or action with a policy limit of not less than $100,000 per occurrence and $300,000 aggregate for the policy period; and

(2) delivers or causes to be delivered to the attorney general a true copy of [~~any written notice of said medical malpractice claim and~~] any summons or citation in a health care liability claim served on the health care professional, [~~or~~] health center, or health clinic, which [~~written notice,~~] summons, or citation shall be delivered to the attorney general not later than the 60th [~~45th~~] day after the receipt thereof by the health care professional, [~~or~~] health center, or health clinic. However, subsequent notification of such summons or citation shall not be a basis for denial of a claim for indemnification unless the attorney general proves by clear and convincing evidence that such delay would unduly prejudice the state's ability to evaluate the reasonableness of the settlement offer or agreement. No such claim may be asserted by the state unless within 10 days of the

receipt of such late notification by the attorney general (or such greater or lesser period of time as the court in which the action is filed may allow), the attorney general files in said court (or if no action is pending in any court, in a district court in Travis County, Texas) a pleading setting forth the reasons why the state's ability to evaluate the reasonableness of the settlement offer or agreement has been prejudiced.

Sec. 110.006. INFORMATION PROVIDED TO ATTORNEY GENERAL; SETTLEMENTS. (a) The insurer for a health care professional, [~~or~~] health center, or health clinic that is subject of an eligible [~~malpractice~~] health care liability claim shall designate an attorney or other representative assigned to the claim who shall keep the attorney general or his designee reasonably informed of significant development in the claim or action, including all settings for trials or dispositive motions, all settlement offers and demands, all pleadings by or against the health care professional, [~~or~~] health center, or health clinic, all judgments or other dispositive orders, and all written recommendations of counsel for the health care professional, [~~or~~] health center, or health clinic regarding settlement.

(b) If a settlement agreement is reached between the health care professional, [~~or~~] health center, or health clinic and a claimant, the insurer for the health care professional, [~~or~~] health center, or health clinic shall promptly notify the attorney general of same. The settlement shall become final and binding upon the state unless, within 10 days of the receipt of said notice by the attorney general (or such greater or lesser period of time as the court in which the action is filed may allow), the attorney general files in said court (or, if no action is pending in any court, in a district court of Travis County, Texas) a written objection to the settlement setting forth in detail why [~~the court should find that~~] the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated and any other reason why the state should not be liable for indemnification under this chapter based upon all the facts and circumstances of the case. A hearing shall promptly be held upon any such objection, either before the court or a special master appointed by the court for that purpose. At any such hearing, the burden shall be upon the attorney general to prove by clear and convincing evidence that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated or any other reason why the state should not be liable for indemnification under this Chapter based upon all the facts and circumstances of the case. Unless the court finds that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated or that there is other reasons why the state should not be liable for indemnification under this Chapter based upon all the facts and circumstances of the case, the court shall enter an order approving the settlement and directing the state to make the required indemnity payment

thereunder. Such an order shall be reviewable by an appellate court only upon the filing of an application for writ of mandamus within 15 days of the date said order is signed, and only for an abuse of discretion by the trail court. Any such application for writ of mandamus shall be given priority in the appellate court in which it is filed above all other applications for writ of mandamus docketed in said court.

(c) If the attorney general files an objection under Subsection (b), the court may, with the agreement of the parties to the settlement agreement, permit the payment of any other sums due to be paid under said agreement by parties other than the state while the objection of the attorney general is pending adjudication.

(d) If a suit involving an eligible [~~medical malpractice~~] health care liability claim is imminently scheduled for jury trial or alternative dispute resolution, or if the defendant seeking indemnity is subject to a time limit under the Stowers Doctrine or other applicable law to respond to a settlement proposal, or is being tried before a jury, and settlement negotiations are ongoing between the health care professional, [~~or~~] health center, or health clinic and any claimant, either of those parties may request the court to require the attorney general or his designee to assign an attorney to monitor such negotiations so that if a settlement agreement is reached between the parties, the attorney so assigned by the attorney general can immediately advise the court of any objection, in which event the hearing described in Subsection (b) [~~regarding the reasonableness of the settlement amount~~] shall be held immediately after the settlement agreement is reduced to writing or announced on the record in open court, so that the trial court may render its determination before the petit jury or jury panel is discharged.

(e) Except to the extent that the attorney general is authorized under this section to object to the reasonableness of a settlement, the attorney general shall not be authorized to intervene in any court proceeding involving an eligible [~~medical malpractice~~] health care liability claim. The insurer for the health care professional, [~~or~~] health center, or health clinic shall be in charge of the defense of any such claim.

(f) Upon final disposition of an eligible [~~medical malpractice~~] health care liability claim by settlement or judgment, funds shall be paid by the comptroller on vouchers that shall be promptly prepared, verified, and signed by the attorney general.

Sec. 110.007. EXPIRATION. Unless continued in existence, this chapter expires September 1, 1997 [~~1995~~].

SECTION 3. (a) Section 2 of this act applies to any cause of action or claim for indemnification which was filed before or after the effective date of this act.

(b) Section 1 of this Act applies only to professional liability or health care liability insurance policies delivered, issued for delivery, or renewed on or after January 1, 1994. Policies delivered, issued for delivery, or renewed before January 1, 1994, are governed by the law that existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 1993.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 2

Amend **S.B. 1410**, as follows:

(1) Amend Section 1 relating to Article 5.15-4 Insurance Code, to strike the words "medical malpractice claim" and substitute the words "health care liability claim."

(2) Amend the balance of said Section 1, if applicable, to replace all references to "medical malpractice claim" with "health care liability claim."

Floor Amendment No. 3

Amend **S.B. 1410** on page 9, line 1, by substituting the word "includes" for the words "does not include."

The amendments were read.

On motion of Senator Parker and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1410** by a viva voce vote.

BILLS SIGNED

The Presiding Officer announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

S.B. 7	**S.B. 773**
S.B. 13	**S.B. 866**
S.B. 274	**S.B. 901**
S.B. 371	**S.B. 1023**
S.B. 405	**S.B. 1029**
S.B. 426	**S.B. 1089**
S.B. 472	**S.B. 1117**
S.B. 544	**S.B. 1271**
S.B. 548	**S.B. 1356**
S.B. 565	**S.B. 1429**
S.B. 599	**S.B. 1434**
S.B. 695	**S.B. 1482**
S.B. 737	**S.B. 1488**

(Senator Parker in Chair)

SENATE RULE 11.19 SUSPENDED
(Posting Rule)

On motion of Senator Haley and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Administration might consider **H.C.R. 135** for the Local and Uncontested Bills Calendar today.

NOTICE OF SESSION TO HOLD LOCAL AND UNCONTESTED BILLS CALENDAR

Senator Haley announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks.

On motion of Senator Haley and by unanimous consent, Senate Rule 9.03(b) was suspended to give notice that a Local and Uncontested Bills Calendar would be held at 2:00 p.m. today and that all bills would be considered on second reading in the order in which they are listed.

MESSAGE FROM THE HOUSE

House Chamber
May 29, 1993

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 628**. The House conferees are: Representatives Marchant, Chair; McCoulskey, Patterson, D. Smith, and Haggerty.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

RECESS

On motion of Senator Truan, the Senate at 11:50 a.m. recessed until 2:00 p.m. for the Local and Uncontested Bills Calendar.

AFTER RECESS

The Senate met at 2:00 p.m. and was called to order by Senator Haley.

MESSAGE FROM THE HOUSE

House Chamber
May 29, 1993

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 107, Authorizing the Chief Clerk of the House to return **H.B. 1564** to the Senate for further consideration.

S.C.R. 108, Authorizing the Chief Clerk of the House to return **H.B. 7** to the Senate for further consideration.

H.C.R. 169, Congratulating Charles F. Williams on being elected the grand exalted ruler of the Benevolent and Protective Order of Elks.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 421**. The House conferees

are: Representatives Cook, Chair; Earley, West, Turner of Coleman, and Goodman.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

BILLS AND RESOLUTIONS SIGNED

The Presiding Officer announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

H.B. 22	H.B. 1387	H.B. 2179	H.B. 2820
H.B. 245	H.B. 1425	H.B. 2199	H.B. 2831
H.B. 253	H.B. 1544	H.B. 2241	H.B. 2413
H.B. 301	H.B. 1551	H.B. 2242	H.B. 2501
H.B. 333	H.B. 1639	H.B. 2271	H.B. 2511
H.B. 364	H.B. 1696	H.B. 2332	H.B. 2662
H.B. 391	H.B. 1705	H.B. 2499	H.B. 2844
H.B. 431	H.B. 1718	H.B. 2500	H.C.R. 10
H.B. 456	H.B. 1872	H.B. 2516	H.C.R. 66
H.B. 466	H.B. 1873	H.B. 2564	H.C.R. 141
H.B. 567	H.B. 1884	H.B. 2641	H.C.R. 146
H.B. 665	H.B. 1892	H.B. 2716	H.C.R. 151
H.B. 697	H.B. 1952	H.B. 2741	H.C.R. 155
H.B. 825	H.B. 1978	H.B. 2749	H.C.R. 157
H.B. 958	H.B. 2016	H.B. 2790	H.C.R. 163
H.B. 1016	H.B. 2079	H.B. 2815	H.J.R. 21
H.B. 1138	H.B. 2177	H.B. 2817	H.J.R. 22
H.B. 1217	H.B. 2178	H.B. 2761	H.B. 2766
H.B. 1772			

LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer announced that the time had arrived for consideration of the Local and Uncontested Bills Calendar.

Pursuant to Senate Rule 9.03(d), the following bills were laid before the Senate, read second time, amended where applicable, passed to engrossment/third reading, read third time, and passed (vote on Constitutional Three-Day Rule and final passage indicated after the caption of each bill):

S.C.R. 97 (Ellis) Directing the State Preservation Board to include in its long-range master plan for the Capitol grounds a permanent monument in tribute to African American and Mexican American Texans. (vv) (vv)

H.C.R. 135 (Montford) Granting Green International permission to sue the State of Texas and the Texas Department of Criminal Justice. (vv) (vv)

H.B. 318 (Lucio) Relating to the election of commissioners of Brownsville Navigation District of Cameron County, Texas. (31-0) (31-0)

H.B. 326 (Zaffirini) Relating to membership on the electronic data base advisory committee. (31-0) (31-0)

H.B. 663 (Whitmire) Relating to the filling of vacancies on the governing bodies of certain municipalities. (31-0) (31-0)

H.B. 847 (Patterson) Relating to access to criminal history information records by the Department of Protective and Regulatory Services. (31-0) (31-0)

H.B. 898 (Lucio) Relating to the application to navigation districts of certain statutes of limitation. (31-0) (31-0)

H.B. 908 (Lucio) Relating to extended hours for the sale, delivery, consumption, and possession of alcoholic beverages. (31-0) (31-0)

H.B. 1103 (Lucio) Relating to the hours of labor and vacation of members of fire departments in certain municipalities. (31-0) (31-0)

H.B. 1182 (Moncrief) Relating to granting law enforcement authority to special policemen of the General Services Administration. (31-0) (31-0)

H.B. 1261 (Barrientos) Relating to establishing the Texas partnership and scholarship program. (31-0) (31-0)

H.B. 1357 (Henderson) Relating to a complainant's right to appear before the State Commission on Judicial Conduct. (31-0) (31-0)

H.B. 1372 (Shelley) Relating to venue for the offense of thwarting the compulsory school attendance law. (31-0) (31-0)

H.B. 1565 (Henderson) Relating to a cash payment for rental of residential property. (31-0) (31-0)

H.B. 1651 (Montford) Relating to competitive bidding. (31-0) (31-0)

H.B. 1897 (Luna) Relating to the authority of the publisher of the session laws to sell copies of the session laws to the public. (31-0) (31-0)

H.B. 2083 (Armbrister) Relating to the validation of governmental acts and proceedings related to certain annexations and certain extensions of extraterritorial boundaries by municipalities. (31-0) (31-0)

H.B. 2185 (Harris of Tarrant) Relating to findings in child support orders. (31-0) (31-0)

H.B. 2237 (Henderson) To grant qualified immunity from civil liability to certain impartial third parties who conduct or facilitate alternative dispute resolution procedures. (31-0) (31-0)

H.B. 2249 (Sims) Relating to the emphasis of water conservation in certain advanced research and technology programs at institutions of higher education. (31-0) (31-0)

H.B. 2255 (Wentworth) Relating to the provision of transportation for certain AFDC recipients to participate in the JOBS program. (31-0) (31-0)

H.B. 2259 (Harris of Dallas) Relating to records of trials in municipal courts of record of Addison. (31-0) (31-0)

H.B. 2265 (Whitmire) Relating to the conveyance of certain state-owned real property by the Texas Employment Commission and declaring an emergency. (31-0) (31-0)

H.B. 2456 (Barrientos) Relating to the operation of a toll free crime stoppers telephone service for areas of the state not served by a local crime stoppers program. (31-0) (31-0)

H.B. 2524 (Armbrister on behalf of Haley) Relating to the creation and operation of a commission to coordinate the celebration of the bicentennial of the birth of Stephen F. Austin. (31-0) (31-0)

H.B. 2535 (Armbrister) Relating to the authority of a community supervision and corrections department or the pardons and paroles division of the Texas Department of Criminal Justice to enter into contracts for certain supervision services. (31-0) (31-0)

H.B. 2650 (Zaffirini) Relating to requiring persons indicted for or convicted of sexual assault, aggravated sexual assault, or indecency with a child and juveniles adjudicated delinquent for violations of those offenses to undergo certain medical procedures and tests to detect sexually transmitted diseases. (31-0) (31-0)

H.B. 2851 (Carriker) Relating to the creation of municipal courts of record in Denton. (31-0) (31-0)

H.B. 2870 (Patterson) Relating to conflicts of interest of certain persons in certain contracts of certain fresh water supply districts. (31-0) (31-0)

BILLS AND RESOLUTION REMOVED FROM LOCAL AND UNCONTESTED BILLS CALENDAR

Number	Senators Removing
S.C.R. 72	Sibley, Haley
H.B. 322	Sibley, Haley
H.B. 982	Sibley, Haley

RESOLUTION ADDED TO LOCAL AND UNCONTESTED BILLS CALENDAR

Number	Senators Adding
H.C.R. 135	Montford, Haley

CONCLUSION OF SESSION FOR LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer announced that the session for consideration of the Local and Uncontested Bills Calendar was concluded.

RECESS

On motion of Senator Harris of Dallas, the Senate at 2:20 p.m. recessed until 2:30 p.m. today.

AFTER RECESS

The Senate met at 2:30 p.m. and was called to order by the President.

CONFERENCE COMMITTEE ON HOUSE BILL 2663

Senator Armbrister called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 2663** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 2663** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Moncrief, Haley, Bivins, and Wentworth.

CONFERENCE COMMITTEE ON HOUSE BILL 2043

Senator Armbrister called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 2043** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 2043** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Moncrief, Haley, Bivins, and Wentworth.

SENATE RESOLUTION 1152

Senator Armbrister offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 12.03, Rules of the Senate, 73rd Legislature, is suspended, as provided by Senate Rule 12.08, to the extent described in this resolution, to enable the conference committee appointed to adjust the differences between the house and senate versions of **S.B. 1477**, relating to the creation, administration, powers, duties, operation, and financing of the Edwards Aquifer Authority and the management of the Edwards Aquifer, to successfully conclude the committee's deliberations, by authorizing the conferees to consider and take action on the following specific matters:

(1) Senate Rule 12.03(4) is suspended to permit the committee to insert the following language in the bill at the end of Section 1.08(b) of the bill:

This subsection is not intended to allow the authority to regulate surface water.

Explanation: The addition is needed to clarify the intent of the legislature regarding the authority's powers.

(2) Senate Rule 12.03(1) is suspended to permit the committee to amend Subdivision (7) of Section 1.09(b) to read as follows:

(7) one person appointed in rotation who is from Atascosa, Medina, or Uvalde counties, with that person appointed by the governing body of the Evergreen Underground Water District, by the Medina Underground Water Conservation District, or by the Uvalde County Underground Water Conservation District, with the person appointed by the Evergreen Underground Water District serving the first term, followed by a person appointed by the Medina Underground Water Conservation District to serve the second term, followed by a person appointed by the Uvalde County Underground Water Conservation District to serve the third term, and rotating in that order of appointment for subsequent terms.

Explanation: The amendment is needed to specify the board members who serve in rotation and the method of their appointment.

(3) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 1.14(d) (House version Section 1.14(e), Senate version Section 1.15(d)) of the bill to read as follows:

(d) If, through studies and implementation of water management strategies, including conservation, springflow augmentation, diversions downstream of the springs, reuse, supplemental recharge, conjunctive management of surface and subsurface water, and drought management plans, the authority determines that additional supplies are available from the aquifer, the authority, in consultation with appropriate state and federal agencies, may review and may increase the maximum amount of withdrawals provided by this section and set a different maximum amount of withdrawals.

Explanation: The change is needed to provide that the authority may increase but not decrease the maximum amount of withdrawals under the section.

(4) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 1.14(f) (House version Section 1.14(f), Senate version Section 1.15(e)) of the bill to read as follows:

(f) If the level of the aquifer is equal to or greater than 650 feet above mean sea level as measured at Well J-17, the authority may authorize withdrawal from the San Antonio pool, on an uninterruptible basis, of permitted amounts. If the level of the aquifer is equal to or greater than 845 feet at Well J-27, the authority may authorize withdrawal from the Uvalde pool, on an uninterruptible basis, of permitted amounts. The authority shall limit the additional withdrawals to ensure that springflows are not affected during critical drought conditions.

Explanation: The change is needed to set the aquifer levels at 650 feet at Well J-17 and at 845 feet at Well J-27 and to give the authority power to authorize on an uninterruptible basis the withdrawal of permitted amounts at the stated levels.

(5) Senate Rules 12.03(1) and (4) are suspended to allow the committee to amend Section 1.26(4) (House version 1.17(4), Senate version 1.27(3)) to read as follows:

(4) require reduction of nondiscretionary use by permitted or contractual users, to the extent further reductions are necessary, in the reverse order of the following water use preferences:

(A) municipal, domestic, and livestock;
(B) industrial and crop irrigation;
(C) residential landscape irrigation;
(D) recreational and pleasure; and
(E) other uses that are authorized by law.

Explanation: The change is needed to make clear that the reduction in nondiscretionary use is required of permitted or contractual users.

(6) Senate Rules 12.03(1) and (4) are suspended to allow the committee to add new Subsection (b) to Section 1.34 (House version Section 1.25, Senate version Section 1.35) of the bill to read as follows, and to appropriately reletter the subsequent subsection:

(b) The authority by rule may establish a procedure by which a person who installs water conservation equipment may sell the water conserved.

Explanation: The change is needed to provide for the sale of conserved water by a person who installs conservation equipment.

The resolution was read and was adopted by a viva voce vote.

SENATE RESOLUTION 1125

Senator Ellis offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 12.03, Rules of the Senate, 73rd Legislature, is suspended, as provided by Senate Rule 12.08, to the extent described in this resolution, to enable the conference committee appointed to adjust the differences between the house and senate versions of **S.B. 642**, relating to the creation of the Council on Workforce and Economic Competitiveness, the creation of local workforce development boards, and the development of an integrated state and local program delivery system serving all Texans, to successfully conclude the committee's deliberations, by authorizing the conferees to consider and take action on the following specific matter:

Senate Rule 12.03(1) is suspended to permit the committee to change 8.01(b) of the bill to read as follows:

(b) The Council on Workforce and Economic Competitiveness shall be appointed and operational not later than September 1, 1993.

Explanation: This change is needed to provide for a more effective transition in establishing the Council on Workforce and Economic Competitiveness.

The resolution was read and was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate John Ross Montford, son of Senator Montford, and Matthew McInelly, both serving today as Senate Pages.

The Senate welcomed John and Matthew.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 954 ADOPTED

Senator Brown called from the President's table the Conference Committee Report on **S.B. 954.** The Conference Committee Report was filed with the Senate on Thursday, May 27, 1993.

On motion of Senator Brown, the Conference Committee Report was adopted by a viva voce vote.

SENATE BILL 963 WITH HOUSE AMENDMENTS

Senator Sims called **S.B. 963** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment No. 1

Amend **S.B. 963** on page 12, line 14, by striking the phrase "Type I".

Amendment No. 2

Amend **S.B. 963** as follows:

(1) After SECTION 6 of the bill, add a new SECTION 7 to the bill to read as follows:

SECTION 7. Section 361.0234, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) The assessments and rules adopted under Sections 361.0232 and 361.0234 shall not be applied retroactively to any application that was declared administratively and technically complete and for which public hearings had commenced prior to the original effective date of those sections.

Amendment No. 3

Amend **S.B. 963** by inserting an appropriately numbered section to read as follows:

SECTION ____. Effective September 1, 1994, Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0225 to read as follows:

Sec. 361.0225. APPLICATION OF SLUDGE TO LAND. (a) A person may not apply sludge to land for beneficial use, use sludge for land treatment or landfilling, or otherwise treat, dispose of, or store sludge on land unless:

(1) the land to which the sludge is applied is of a type and slope specified by commission rule for that application; and

(2) the sludge is immediately covered by drilling it into the land in accordance with applicable law or covered with at least four inches of dirt.

(b) In this section, "sludge" means solid, semisolid, or liquid waste that contains human waste and that is generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, including the treated

effluent from a wastewater treatment plant if the treated effluent contains human waste.

The amendments were read.

Senator Sims moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **S.B. 963** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sims, Chair; Armbrister, Truan, Shelley, and Bivins.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1181 ADOPTED

Senator Barrientos called from the President's table the Conference Committee Report on **S.B. 1181.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Barrientos, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

(Senator Harris of Tarrant in Chair)

PRESENTATIONS

Senator Barrientos was recognized and introduced to the Senate Ray Hymel of his staff and Craig Hudgins of the Legislative Council and expressed to them his gratitude for their hard work and dedication on **S.B. 1181.**

The Senate extended its appreciation to Mr. Hymel and Mr. Hudgins.

Senator Barrientos then escorted Mr. Hymel and Mr. Hudgins to the President's rostrum, where the President expressed his thanks and presented each of the gentlemen with a gavel from the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2055 ADOPTED

Senator Parker called from the President's table the Conference Committee Report on **H.B. 2055.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Parker, the Conference Committee Report was adopted by a viva voce vote.

SENATE RULE 12.09(a) SUSPENDED

On motion of Senator Haley and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **S.B. 381.**

CONFERENCE COMMITTEE REPORT ON SENATE BILL 381 ADOPTED

Senator Haley called from the President's table the Conference Committee Report on **S.B. 381.** The Conference Committee Report was filed with the Senate on Saturday, May 29, 1993.

On motion of Senator Haley, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

HOUSE BILL 2835 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2835, Relating to providing for a benefit increase in certain annuities payable by the Teacher Retirement System of Texas.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2835 ON THIRD READING

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2835** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

(President in Chair)

CONFERENCE COMMITTEE REPORT ON SENATE BILL 297 ADOPTED

Senator Barrientos called from the President's table the Conference Committee Report on **S.B. 297.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Barrientos, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 1153

Senator Carriker offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 12.03, Rules of the Senate, 73rd Legislature, is suspended, as provided by Senate Rule 12.08, to the extent described in this resolution, to enable the conference committee appointed to adjust the differences between the house and senate versions of **H.B. 1445,** relating to the continuation of the Texas Alcoholic Beverage Commission and to the regulation of alcoholic beverages; providing penalties, to successfully conclude the committee's deliberations, by authorizing the conferees to consider and take action on the following specific matters:

(1) Senate Rule 12.03(3) is suspended to permit the committee to add language to the added Section 101.75, Alcoholic Beverage Code, concerning the offense of possession of an open container of an alcoholic beverage so that Section 101.75 reads as follows:

Sec. 101.75. CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR SCHOOLS. (a) A person commits an offense if the person possesses an open container or consumes an alcoholic beverage on a public street, public alley, or public sidewalk within 600 feet of the property line of a facility that the person knows is a public or private school that provides all or any part of kindergarten through twelfth grade.

(b) This section does not apply to the possession of an open container or the consumption at an event duly authorized by appropriate authorities and held in compliance with all other applicable provisions of this code.

(c) An offense under this section is a Class C misdemeanor.

(d) In this section, "open container" has the meaning assigned in Section 109.35.

Explanation: This change is needed to clarify the authority of a municipality to regulate the consumption of alcoholic beverages and the possession of open containers within certain distances of a public or private school.

(2) Senate Rule 12.03(3) is suspended to permit the committee to add language to the added Section 109.35, Alcoholic Beverage Code, concerning the offense of possession of an open container of an alcoholic beverage so that Section 109.35 reads as follows:

Sec. 109.35. ORDERS FOR PROHIBITION ON CONSUMPTION. (a) If the governing body of a municipality determines that the possession of an open container or the public consumption of alcoholic beverages in the central business district of the municipality is a risk to the health and safety of the citizens of the municipality, the governing body may petition for the adoption of an order by the commission that prohibits the possession of an open container or the public consumption of alcoholic beverages in that central business district.

(b) If a municipality submits a petition for an order of the commission to prohibit the possession of an open container or the public consumption of alcoholic beverages in the central business district of the city and attaches to the petition a map, plat, or diagram showing the central business district that is to be covered by the prohibition, the commission shall approve and issue the order without further consideration unless the commission finds that the map, plat, or diagram improperly identifies the central business district.

(c) The commission's order may not prohibit the possession of an open container or the consumption of alcoholic beverages in motor vehicles, buildings not owned or controlled by the municipality, residential structures, or licensed premises located in the area of prohibition.

(d) In this section, "central business district" means a compact and contiguous geographical area of a municipality in which at least 90 percent of the land is used or zoned for commercial purposes and that is the area

that has historically been the primary location in the municipality where business has been transacted.

(e) In this section, "open container" means a container that is no longer sealed.

Explanation: This change is needed to clarify the authority of a municipality to regulate the consumption of alcoholic beverages and the possession of open containers within the central business district of a municipality.

The resolution was read and was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1445 ADOPTED

Senator Carriker called from the President's table the Conference Committee Report on **H.B. 1445.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Carriker, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1049 ADOPTED

Senator Parker called from the President's table the Conference Committee Report on **S.B. 1049.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Parker, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1077 ADOPTED

Senator Harris of Dallas called from the President's table the Conference Committee Report on **S.B. 1077.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Harris of Dallas, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 210 ADOPTED

Senator Zaffirini called from the President's table the Conference Committee Report on **S.B. 210.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by a viva voce vote.

RECORD OF VOTES

Senators Bivins, Sibley, and Wentworth asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 456 ADOPTED

Senator Ellis called from the President's table the Conference Committee Report on **S.B. 456.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Ellis, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1113 ADOPTED

Senator Parker called from the President's table the Conference Committee Report on **H.B. 1113.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Parker, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1479 ADOPTED

Senator Parker called from the President's table the Conference Committee Report on **H.B. 1479.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Parker, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 673 ADOPTED

Senator Moncrief called from the President's table the Conference Committee Report on **S.B. 673.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Moncrief, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 680 ADOPTED

Senator Turner called from the President's table the Conference Committee Report on **H.B. 680.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Turner, the Conference Committee Report was adopted by a viva voce vote.

(Senator Montford in Chair)

CONFERENCE COMMITTEE REPORT ON SENATE BILL 642 ADOPTED

Senator Ellis called from the President's table the Conference Committee Report on **S.B. 642.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE JOINT RESOLUTION 13 ADOPTED

Senator Lucio called from the President's table the Conference Committee Report on **S.J.R. 13.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Lucio, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1630 ADOPTED

Senator Harris of Tarrant called from the President's table the Conference Committee Report on **H.B. 1630.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Harris of Tarrant, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2049 ADOPTED

Senator Ellis called from the President's table the Conference Committee Report on **H.B. 2049.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2067 ADOPTED

Senator Ellis called from the President's table the Conference Committee Report on **H.B. 2067.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

(President in Chair)

SENATE RESOLUTION 1155

Senator Rosson offered the following resolution:

WHEREAS, Education is essential to the preservation of a free and democratic society, but the state's current system of funding higher education disregards the needs of citizens in certain areas of the state, and such inequity is inconsistent with the principles of democracy; and

WHEREAS, When Texans launched their revolution in 1835, they cited as foremost among their grievances the failure of the government to establish and properly fund an adequate public education system; after forming a free and independent republic, Texans included in their

constitution provisions to ensure the permanent and continuous support of a public education system; and

WHEREAS, The spirit of that constitution is being violated today as institutions of higher learning in South Texas and along the border struggle to receive adequate state funding and support for their programs; although 20 percent of the Texas population lives along the border, that region receives only 10 percent of available higher education funds; and

WHEREAS, This grievous situation has been brought to the attention of the Texas Higher Education Coordinating Board, which oversees the distribution of public funds among state universities and colleges, but the problem persists; opportunities for higher education in South Texas continue to lag behind the educational opportunities of other similarly populated areas of the state, even as economic activity in this region steadily increases; and

WHEREAS, The easing of trade restrictions in Mexico combined with growing interest in international trade has put South Texas at the forefront of economic activity in the state, but to take advantage of this unprecedented opportunity, Texas needs an educated work force in this region, a work force that is prepared to meet the challenges and expectations of a global economy; and

WHEREAS, Now more than ever, it is vital that South Texans receive fair and adequate funding for their institutions of higher learning; as we approach the 21st century, support of higher education becomes less an ideal and more an economic necessity, for any state that is unable to meet the changing demands of the world market will be denied opportunities for economic growth and expansion; and

WHEREAS, If the inequitable funding of higher education in South Texas is allowed to continue, all Texans will suffer from the negative economic impact and lost opportunities; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 73rd Legislature, hereby express its intent that institutions of higher education in South Texas and along the border receive adequate support from the Texas Higher Education Coordinating Board; and, be it further

RESOLVED, That an official copy of this resolution be forwarded to Commissioner Kenneth H. Ashworth of the Texas Higher Education Coordinating Board as an expression of the sentiment of the Senate of the State of Texas.

The resolution was read and was adopted by a viva voce vote.

ROSSON	ARMBRISTER
BARRIENTOS	BIVINS
BROWN	ELLIS
CARRIKER	HARRIS OF TARRANT
HALEY	HARRIS OF DALLAS
LEEDOM	LUNA
LUCIO	MONCRIEF
MADLA	NELSON
MONTFORD	PATTERSON
PARKER	SHELLEY

SHAPIRO	SIMS
SIBLEY	TURNER
TRUAN	WEST
WENTWORTH	ZAFFIRINI
WHITMIRE	

SENATE RULE 12.09(a) SUSPENDED

On motion of Senator Wentworth and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **H.B. 2740.**

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2740 ADOPTED

Senator Wentworth called from the President's table the Conference Committee Report on **H.B. 2740.** The Conference Committee Report was filed with the Senate on Saturday, May 29, 1993.

On motion of Senator Wentworth, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 987 ADOPTED

Senator Turner called from the President's table the Conference Committee Report on **S.B. 987.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Turner, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2714 ADOPTED

Senator Whitmire called from the President's table the Conference Committee Report on **H.B. 2714.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Whitmire, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1704 ADOPTED

Senator Zaffirini called from the President's table the Conference Committee Report on **H.B. 1704.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1626 ADOPTED

Senator Zaffirini called from the President's table the Conference Committee Report on **H.B. 1626.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by a viva voce vote.

SENATE RULE 12.09(a) SUSPENDED

On motion of Senator West and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **H.B. 31.**

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 31 ADOPTED

Senator West called from the President's table the Conference Committee Report on **H.B. 31.** The Conference Committee Report was filed with the Senate on Saturday, May 29, 1993.

On motion of Senator West, the Conference Committee Report was adopted by a viva voce vote.

SENATE RULE 12.09(a) SUSPENDED

On motion of Senator Sims and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **S.B. 172.**

CONFERENCE COMMITTEE REPORT ON SENATE BILL 172 ADOPTED

Senator Sims called from the President's table the Conference Committee Report on **S.B. 172.** The Conference Committee Report was filed with the Senate on Saturday, May 29, 1993.

On motion of Senator Sims, the Conference Committee Report was adopted by a viva voce vote.

RECORD OF VOTE

Senator Bivins asked to be recorded as "Present-not voting" on the adoption of the Conference Committee Report.

SENATE RULE 12.09(a) SUSPENDED

On motion of Senator Sims and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **H.B. 1077.**

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1077 ADOPTED

Senator Sims called from the President's table the Conference Committee Report on **H.B. 1077.** The Conference Committee Report was filed with the Senate on Saturday, May 29, 1993.

On motion of Senator Sims, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1158 ADOPTED

Senator Henderson called from the President's table the Conference Committee Report on **H.B. 1158.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Henderson, the Conference Committee Report was adopted by a viva voce vote.

(Senator Turner in Chair)

VOTES RECONSIDERED

On motion of Senator Henderson and by unanimous consent, the vote by which **H.B. 1564** was finally passed was reconsidered.

Question—Shall **H.B. 1564** be finally passed?

On motion of Senator Henderson and by unanimous consent, the vote by which the Three-Day Rule on **H.B. 1564** was suspended was reconsidered.

Question—Shall the Three-Day Rule be suspended?

On motion of Senator Henderson and by unanimous consent, the vote by which **H.B. 1564** was passed to third reading was reconsidered.

Question—Shall the bill be passed to third reading?

On motion of Senator Henderson and by unanimous consent, the vote by which the amendment by Senator Henderson to **H.B. 1564** was adopted was reconsidered.

Question—Shall the amendment be adopted?

On motion of Senator Henderson and by unanimous consent, the amendment was withdrawn.

The bill was again passed to third reading by a viva voce vote.

HOUSE BILL 1564 ON THIRD READING

Senator Henderson again moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1564** be placed on its third reading and final passage.

H.B. 1564, Relating to occupancy limits for rental dwellings.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was again read third time and was passed by a viva voce vote.

VOTES RECONSIDERED

On motion of Senator Henderson and by unanimous consent, the vote by which **C.S.H.B. 7** was finally passed was reconsidered.

Question—Shall **C.S.H.B. 7** be finally passed?

On motion of Senator Henderson and by unanimous consent, the vote by which the Three-Day Rule on **C.S.H.B. 7** was suspended was reconsidered.

Question—Shall the Three-Day Rule be suspended?

On motion of Senator Henderson and by unanimous consent, the vote by which **C.S.H.B. 7** was passed to third reading was reconsidered.

Question—Shall the bill be passed to third reading?

On motion of Senator Henderson and by unanimous consent, **C.S.H.B. 7** was withdrawn and **H.B. 7** was substituted in lieu thereof.

H.B. 7 was passed to third reading by a viva voce vote.

HOUSE BILL 7 ON THIRD READING

Senator Henderson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 7** be placed on its third reading and final passage.

H.B. 7, Relating to the criteria for enforceability of covenants not to compete and to certain procedures and remedies in actions to enforce those covenants.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

SENATE RULE 12.09(a) SUSPENDED

On motion of Senator Shelley and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **H.B. 1185.**

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1185 ADOPTED

Senator Shelley called from the President's table the Conference Committee Report on **H.B. 1185.** The Conference Committee Report was filed with the Senate on Saturday, May 29, 1993.

On motion of Senator Shelley, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 393 ADOPTED

Senator Armbrister called from the President's table the Conference Committee Report on **H.B. 393.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RULE 12.09(a) SUSPENDED

On motion of Senator Carriker and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **H.B. 903.**

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 903 ADOPTED

Senator Carriker called from the President's table the Conference Committee Report on **H.B. 903.** The Conference Committee Report was filed with the Senate on Saturday, May 29, 1993.

On motion of Senator Carriker, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 458 ADOPTED

Senator Madla called from the President's table the Conference Committee Report on **H.B. 458.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Madla, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RULE 12.09(a) SUSPENDED

On motion of Senator West and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **S.B. 473.**

CONFERENCE COMMITTEE REPORT ON SENATE BILL 473 ADOPTED

Senator West called from the President's table the Conference Committee Report on **S.B. 473.** The Conference Committee Report was filed with the Senate on Saturday, May 29, 1993.

On motion of Senator West, the Conference Committee Report was adopted by a viva voce vote.

(President in Chair)

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 977 ADOPTED

Senator Turner called from the President's table the Conference Committee Report on **H.B. 977.** The Conference Committee Report was filed with the Senate on Thursday, May 27, 1993.

Senator Turner moved to adopt the Conference Committee Report on **H.B. 977.**

Senator Barrientos offered a substitute motion to return the bill to conference committee and requested the appointment of new House conferees.

The substitute motion was lost by the following vote: Yeas 11, Nays 17.

Yeas: Barrientos, Haley, Lucio, Luna, Ratliff, Rosson, Shelley, Truan, Wentworth, West, Zaffirini.

Nays: Bivins, Brown, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Madla, Moncrief, Montford, Nelson, Parker, Patterson, Shapiro, Sibley, Sims, Turner, Whitmire.

Absent: Armbrister, Carriker, Ellis.

Question recurring on the motion to adopt the Conference Committee Report, the motion prevailed by a viva voce vote.

RECORD OF VOTE

Senator Barrientos asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report.

(Senator Whitmire in Chair)

SENATE RESOLUTION 1156

Senator Montford offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Senate Rule 12.03 and 12.04, Rules of the Senate, 73rd Legislature be suspended in part as provided by Senate Rule 12.08 to enable consideration of, and action on, the following specific matters which may be contained in the Conference Committee Report on **H.B. 1719:**

(1) That Section (5) Senate Rule 12.04 be suspended to allow the addition of a new section not included in either the House or Senate versions of the bill to read as follows:

Sec. ____. The following sums of money are hereby appropriated out of Fund No. 040 for payment of itemized claims and judgements plus interest, if any, against the State of Texas as follows:

To pay Patricia Felix for payment of a settlement, including all accrued interest and attorneys fees, in the case of Patricia Felix v. Texas State Board of Barber Examiners and Jo King McCrorey, Cause No. 91-2803, in the District Court, Travis County, 201st Judicial District.....$250,000

The resolution was read and was adopted by a viva voce vote.

SENATE RULE 12.09(a) SUSPENDED

On motion of Senator Harris of Dallas and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **H.B. 273.**

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 273 ADOPTED

Senator Harris of Dallas called from the President's table the Conference Committee Report on **H.B. 273.** The Conference Committee Report was filed with the Senate on Saturday, May 29, 1993.

On motion of Senator Harris of Dallas, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RULE 12.09(a) SUSPENDED

On motion of Senator Turner and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **S.B. 1234.**

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1234 ADOPTED

Senator Turner called from the President's table the Conference Committee Report on **S.B. 1234.** The Conference Committee Report was filed with the Senate on Saturday, May 29, 1993.

On motion of Senator Turner, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 578 ADOPTED

Senator Lucio called from the President's table the Conference Committee Report on **H.B. 578.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Lucio, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 1157

Senator Parker offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 12.03, Rules of the Senate, 73rd Legislature, Regular Session, 1993, is suspended, as provided by Senate Rule 12.08, to enable the senate to the extent described in this resolution to permit the conference committee appointed to adjust the differences between the house and senate versions of **S.B. 1062**, relating to the continuation and operation of the Texas State Board of Medical Examiners and to the regulation of the practice of medicine, including the practice of acupuncture, to successfully conclude the committee's deliberations by taking action on the following specific matters:

(1) Senate Rule 12.03(2) is suspended to permit the committee to amend redesignated Section 4.02(i), Medical Practice Act, by striking "or criminal" and by striking ", and Rule 408, Texas Rules of Criminal Evidence".

Explanation: This change is necessary to permit admission into evidence in criminal litigation of an agreed disposition of a complaint brought before the Texas State Board of Medical Examiners.

(2) Senate Rule 12.03(2) is suspended to permit the committee to amend redesignated Section 4.02(n), Medical Practice Act, by striking "subsequent".

Explanation: This change is necessary to ensure that the staff of the Texas State Board of Medical Examiners and the representatives of the board that participate in an informal meeting with a licensee are subject to the ex parte provisions of the Administrative Procedure and Texas Register Act with regard to all contacts with board members and administrative law judges concerning the case and not merely contacts occurring after the informal meeting.

(3) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add the following Subsection (e) to Section 4.126, Medical Practice Act:

(e) The attorney general may not institute an action for a civil penalty against a person described by Section 3.06(c) or (e) of this Act if the person is not in violation of or threatening to violate this Act or a rule or order adopted by the board.

Explanation: This change is necessary to clarify that the attorney general may not institute an action for a civil penalty against a person who

provides nutritional advice, gives advice concerning proper nutrition, provides or seeks advice or information pertaining to that person's own self-treatment or self-care, or disseminates information pertaining to self-care, if the person is not in violation of or threatening to violate the Medical Practice Act or a rule or order adopted by the Texas State Board of Medical Examiners.

The resolution was read and was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 546 ADOPTED

Senator Ellis called from the President's table the Conference Committee Report on **H.B. 546.** The Conference Committee Report was filed with the Senate on Friday, May 28, 1993.

On motion of Senator Ellis, the Conference Committee Report was adopted by a viva voce vote.

SENATE RULE 12.09(a) SUSPENDED

On motion of Senator Ellis and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **S.B. 959.**

CONFERENCE COMMITTEE REPORT ON SENATE BILL 959 ADOPTED

Senator Ellis called from the President's table the Conference Committee Report on **S.B. 959.** The Conference Committee Report was filed with the Senate on Saturday, May 29, 1993.

On motion of Senator Ellis, the Conference Committee Report was adopted by a viva voce vote.

SENATE RULE 12.09(a) SUSPENDED

On motion of Senator Barrientos and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **H.B. 284.**

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 284 ADOPTED

Senator Barrientos called from the President's table the Conference Committee Report on **H.B. 284.** The Conference Committee Report was filed with the Senate on Saturday, May 29, 1993.

On motion of Senator Barrientos, the Conference Committee Report was adopted by a viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 29, 1993

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House has adopted the Conference Committee Report on **S.B. 1067** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 16** by a vote of 67 Ayes, 58 Noes, 1 Present-not voting.

The House has adopted the Conference Committee Report on **S.B. 210** by a non-record vote.

H.C.R. 44, Declaring Kelliston Thomson McDowell to be a naturalized Texan.

H.C.R. 178, Commending Gregory D. Watson on his numerous civic contributions to the State of Texas and to the nation as a whole.

H.C.R. 179, Honoring the memory of Captain John J. Grumbles.

The House has adopted the Conference Committee Report on **H.B. 2116** by a non-record vote.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE RESOLUTION 879 ON SECOND READING

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

S.R. 879, Encouraging law enforcement officials to independently report to the Texas Department of Public Safety incidents of crime that occur on public school campuses according to the department's uniform crime reporting guidelines.

The resolution was read second time and was adopted by the following vote: Yeas 31, Nays 0.

HOUSE CONCURRENT RESOLUTION 150

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 150, Expressing support for the development and domicile in the State of Texas of a Texas International Stock Exchange.

The resolution was read.

On motion of Senator Leedom and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

SENATE RESOLUTION 1158

Senator Parker offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 12.03, Rules of the Senate, 73rd Legislature, is suspended, as provided by Senate Rule 12.08, to the extent described in this resolution, to enable the conference committee appointed to adjust the differences between the

House and Senate versions of **S.B. 1061**, relating to the continuation and functions of the Texas Board of Chiropractic Examiners and to the regulation of the practice of chiropractic, to successfully conclude the committee's deliberations, by authorizing the conferees to consider and take action on the following specific matters:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add the following new SECTION to the bill to read as follows:

SECTION 22. Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended by adding Section 1b to read as follows:

Sec. 1b. (a) Communications between one licensed to practice chiropractic, relative to or in connection with any professional services as a chiropractor to a patient, are confidential and privileged and may not be disclosed except as provided in this section.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a chiropractor that are created or maintained by a chiropractor are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this section continue to apply to confidential communications or records concerning any patient irrespective of when the patient received the services of a chiropractor.

(e) The privilege of confidentiality may be claimed by the patient or chiropractor acting on the patient's behalf.

(f) The chiropractor may claim the privilege of confidentiality, but only on behalf of the patient. The authority to do so is presumed in the absence of evidence to the contrary.

(g) Exceptions to confidentiality or privilege in court or administrative proceedings exist:

(1) when the proceedings are brought by the patient against a chiropractor, including but not limited to malpractice proceedings, and any criminal or license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claims or defense of a chiropractor;

(2) when the patient or someone authorized to act on the patient's behalf submits a written consent to the release of any confidential information, as provided in Subsection (j) of this section;

(3) when the purpose of the proceedings is to substantiate and collect on a claim for chiropractic services rendered to the patient;

(4) in any civil litigation or administrative proceeding, if relevant, brought by the patient or someone on his behalf if the patient is attempting to recover monetary damages for any physical or mental condition including death of the patient; any information is discoverable in any court or administrative proceeding in this state if the court or administrative

body has jurisdiction over the subject matter, pursuant to rules of procedure specified for the matters;

(5) in any disciplinary investigation or proceeding of a chiropractor conducted under or pursuant to this Act, provided that the Board shall protect the identity of any patient whose chiropractic records are examined, except for those patients covered under Subdivision (1) of this subsection or those patients who have submitted written consent to the release of their chiropractic records as provided by Subsection (j) of this section;

(6) in any criminal investigation of a chiropractor in which the Board is participating or assisting in the investigation or proceeding by providing certain records obtained from the chiropractor, provided that the Board shall protect the identity of any patient whose records are provided in the investigation or proceeding, except for those patients covered under Subdivision (1) of this subsection or those patients who have submitted written consent to the release of their chiropractic records as provided by Subsection (j) of this section; this subsection does not authorize the release of any confidential information for the purpose of instigating or substantiating criminal charges against a patient; and

(7) in any criminal prosecution where the patient is a victim, witness, or defendant; records are not discoverable until the court in which the prosecution is pending makes an in camera determination as to the relevancy of the records or communications or any portion thereof; such determination shall not constitute a determination as to the admissibility of such records or communications or any portion thereof.

(h) Exceptions to the privilege of confidentiality, in other than court or administrative proceedings, allowing disclosure of confidential information by a chiropractor, exist only for the following:

(1) governmental agencies if the disclosures are required or permitted by law, provided that the agency shall protect the identity of any patient whose chiropractic records are examined;

(2) medical or law enforcement personnel if the chiropractor determines that there is a probability of imminent physical injury to the patient, to himself, or to others or if there is a probability of immediate mental or emotional injury to the patient;

(3) qualified personnel for the purpose of management audits, financial audits, program evaluations, or research, but the personnel may not identify, directly or indirectly, a patient in any report of the research, audit, or evaluation or otherwise disclose identity in any manner;

(4) those parts of the records reflecting charges and specific services rendered when necessary in the collection of fees for services provided by a chiropractor or chiropractors or professional associations or other entities qualified to render or arrange for services;

(5) any person who bears a written consent of the patient or other person authorized to act on the patient's behalf for the release of confidential information, as provided by Subsection (j) of this section;

(6) individuals, corporations, or governmental agencies involved in the payment or collection of fees for services rendered by a chiropractor;

(7) other chiropractors and personnel under the direction of the chiropractor who are participating in the diagnosis, evaluation, or treatment of the patient; or

(8) in any official legislative inquiry regarding state hospitals or state schools, provided that no information or records which identify a patient or client shall be released for any purpose unless proper consent to the release is given by the patient, and only records created by the state hospital or school or its employees shall be included under this subsection.

(i) Exceptions to the confidentiality privilege in this Act are not affected by any statute enacted before the effective date of this Act.

(j)(1) Consent for the release of confidential information must be in writing and signed by the patient; a parent or legal guardian if the patient is a minor; a legal guardian if the patient has been adjudicated incompetent to manage his personal affairs; an attorney ad litem appointed for the patient, as authorized by the Texas Mental Health Code (Subtitle C, Title 7, Health and Safety Code); the Persons with Mental Retardation Act (Subtitle D, Title 7, Health and Safety Code); Subtitle B, Title 6, Health and Safety Code; Subtitle E, Title 7, Health and Safety Code; Chapter 5, Texas Probate Code; and Chapter 11, Family Code; or other applicable provision or a personal representative if the patient is deceased, provided that the written consent specifies the following:

(A) the information records to be covered by the release;

(B) the reasons or purposes for the release; and

(C) the person to whom the information is to be released.

(2) The patient or other person authorized to consent has the right to withdraw his consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the written notice of the withdrawal.

(3) Any person who receives information made confidential by this Act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

(k) A chiropractor shall furnish copies of chiropractic records requested or a summary or narrative of the records pursuant to a written consent for release of the information as provided by Subsection (j) of this section, except if the chiropractor determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, and the chiropractor may delete confidential information about another person who has not consented to the release. The information shall be furnished by the chiropractor within a reasonable period of time, and reasonable fees for furnishing the information shall be paid by the patient or someone on the patient's behalf. In this subsection, "chiropractic records" means any records pertaining to the history, diagnosis, treatment, or prognosis of the patient.

(l) "Patient" for the purposes of this section means any person who consults or is seen by a person licensed to practice chiropractic to receive chiropractic care.

This action is necessary to specify confidentiality provisions and to protect the confidentiality of patients of chiropractors.

(2) Senate Rule 12.03(1) is suspended to permit the committee to amend the added language of House Amendment No. 3 to strike "Using an accident report prepared by a peace officer in a manner prohibited by law" and substitute "Using an accident report prepared by a peace officer in a manner prohibited by Section 38.12, Penal Code".

This action is necessary to specify the use of an accident report intended to be prohibited.

The resolution was read and was adopted by a viva voce vote.

HOUSE CONCURRENT RESOLUTION 74

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 74, Directing the Texas Department of Human Services to seek a Medicaid waiver in order to expand the services administered by all of the Options for Independent Living programs.

The resolution was read.

On motion of Senator Zaffirini and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

SENATE CONCURRENT RESOLUTION 109

Senator Zaffirini offered the following resolution:

WHEREAS, The Senate has passed **H.B. 2866** and returned it to the house of representatives; and

WHEREAS, Further consideration of the bill by the senate is necessary; now, therefore, be it

RESOLVED by the 73rd Legislature of the State of Texas, That the chief clerk of the house be authorized to return **H.B. 2866** to the senate for further consideration.

The resolution was read.

On motion of Senator Zaffirini and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1077

Senator Sims submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1077** have

met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

SIMS	PLACE
PATTERSON	GRAY
ZAFFIRINI	EARLEY
BIVINS	SEIDLITS
LUNA	BLACK
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2740

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas
May 28, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2740** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

WENTWORTH	RODRIGUEZ
LUNA	NAISHTAT
ZAFFIRINI	BAILEY
HERNANDEZ	
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 381

Senator Haley submitted the following Conference Committee Report:

Austin, Texas
May 28, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 381** have met

and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HALEY	ECKELS
SHELLEY	MARTIN
MADLA	BLACK
HARRIS OF DALLAS	SEIDLITS
	WOLENS
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the acquisition or provision of goods and services by the state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

PART 1. GENERAL STATE ACQUISITION PROCESS

SECTION 1.01. (a) Section 2, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. PURPOSE. The purpose of this Act is to provide a method of financing:

(1) for the acquisition or construction of buildings in Travis County, Texas; and

(2) for the purchase or lease of equipment by state agencies in the executive or judicial branch of state government.

(b) The amendment of Section 2, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), by Section 42, **H.B. 2626**, Acts of the 73rd Legislature, Regular Session, 1993, has no effect.

SECTION 1.02. (a) Section 9A(a), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The authority may issue and sell obligations for the financing of a lease or other agreement so long as the agreement concerns equipment that a state agency in the executive or judicial branch of state government has purchased or leased or intends to purchase or lease. The authority's power to issue obligations includes the power to issue and sell obligations for the financing of a package of agreements involving one or more state agencies.

(b) The amendment of Subsection (a), Section 9A, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), by Section 43, **H.B. 2626**, Acts of the 73rd Legislature, Regular Session, 1993, has no effect.

SECTION 1.03. Section 1(3), Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), is amended to read as follows:

(3) "State agency" has the meaning assigned by Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) [~~means a state department, commission, board, office, institution, facility, or other agency the jurisdiction of which is not limited to a geographical portion of the state. The term includes a university system~~

~~and an institution of higher education as defined in Section 61.003, Education Code. The term does not include a public junior college~~].

SECTION 1.04. Subchapter C, Chapter 403, Government Code, is amended by adding Section 403.039 to read as follows:

Sec. 403.039. TEXAS IDENTIFICATION NUMBER SYSTEM. (a) The comptroller shall assign a Texas Identification Number, based on the comptroller's taxpayer identification number system, to each person, other than a state employee, who supplies property or services to the state for compensation or reimbursement.

(b) The Texas Identification Number system shall be used by each state agency as the primary identification system for persons, other than state employees, who supply property or services to the agency for compensation or reimbursement. The agency may assign secondary numbers if the secondary numbering system does not unnecessarily create duplication of data bases, efforts, or costs.

(c) All state agencies shall cooperate with the comptroller to convert existing relevant identification systems to the Texas Identification Number system. The comptroller may adopt rules governing the conversion to and the administration of the Texas Identification Number system, including rules on the procedure for applying for a number under the system.

(d) In this section, "state agency" means any department, commission, board, office, or other agency in the executive, legislative, or judicial branch of state government, including an institution of higher education.

SECTION 1.05. The comptroller shall begin implementation of the Texas Identification Number system, as added by Section 1.04 of this part, as soon as practicable. A state agency may phase in its use of the system but shall fully implement the system not later than September 1, 1998.

SECTION 1.06. Section 1.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subsections (l)-(p) to read as follows:

(l) The commission and each state agency shall prepare as part of its strategic plan under Article 6252-31, Revised Statutes, as added by Chapter 384, Acts of the 72nd Legislature, Regular Session, 1991, a written plan for increasing the commission's or the agency's use of historically underutilized businesses in purchasing and in public works contracting. On request, the commission shall provide technical assistance to an agency that is preparing its plan under this subsection. The plan must include:

(1) a policy or mission statement relating to increasing use of historically underutilized businesses by the commission or agency;

(2) goals to be met by the commission or agency in carrying out the policy or mission; and

(3) specific programs to be conducted by the commission or agency to meet the goals stated in the plan, including a specific program to encourage contractors to use historically underutilized businesses as partners and subcontractors.

(m) The commission and each state agency shall prepare an annual report for each fiscal year documenting progress under its plan for increasing use of historically underutilized businesses. The commission or agency shall file the report with the governor, lieutenant governor, and

speaker of the house of representatives not later than December 31 of each year.

(n) In cooperation with the state auditor, the commission shall develop a standard form for reports prepared under Subsection (m) of this section.

(o) The commission shall assist the Texas Department of Commerce in the performance of the department's duties under Section 481.103, Government Code.

(p) The commission shall encourage the use of historically underutilized businesses by state agencies by:

(1) working with state agencies to establish a statewide policy for increasing use of historically underutilized businesses;

(2) assisting state agencies in seeking historically underutilized businesses capable of supplying materials and services that the agencies require;

(3) assisting state agencies in identifying and advising historically underutilized businesses on the types of goods and services needed by the agencies; and

(4) assisting state agencies in increasing the volume of business placed with historically underutilized businesses.

SECTION 1.07. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.081 to read as follows:

Sec. 3.081. CATALOGUE PURCHASE PROCEDURE. (a) A vendor who wants to sell or lease automated information systems under this section to state agencies covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes) shall apply to the commission for designation as a "qualified information systems vendor" according to an application process promulgated by the commission. At a minimum, the application process shall include submission of the following elements:

(1) a catalogue containing all products and services eligible for purchase by state agencies, including descriptions of each product or service, the list price of each product or service, and the price to Texas state agencies of each product or service;

(2) a maintenance, repair, and support plan for all eligible products and services;

(3) proof of the applicant's financial resources and ability to perform; and

(4) a guarantee that the vendor will make available equivalent replacement parts for products sold to Texas for at least three years from the date of a product's discontinuation.

(b) Within 90 days after the effective date of the law enacting this section the commission shall establish standards and criteria for designating qualified information systems vendors on a regional and statewide basis. A vendor remains qualified until the commission determines the vendor fails to meet the criteria set forth in this section. Vendors granted regional status may sell catalogue-listed products and services directly to state agencies covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes) within a region defined by the commission.

Vendors granted statewide status may sell catalogue-listed products and services directly to any state agency covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes). The commission's standards and criteria shall be developed in accordance with the following parameters:

(1) the ability of the vendor to provide adequate and reliable support and maintenance;

(2) the vendor's ability to provide adequate and reliable support and maintenance in the future;

(3) the technical adequacy and reliability of the vendor's products; and

(4) consistency with standards adopted by the Department of Information Resources or a subsequent entity.

(c) If a vendor is designated by the commission as a qualified information systems vendor, the vendor shall publish and maintain a catalogue containing all products and services eligible for purchase by state agencies, including descriptions of each product or service, the list price of each product or service, and the price to Texas state agencies of each product or service. The vendor shall update the catalogue on an as needed basis to reflect changes in price or the availability of products or services and shall forward a copy of each updated catalogue to the commission and all eligible purchasers.

(d) A state agency covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes) may purchase or lease automated information systems directly from a qualified information systems vendor and may negotiate additional terms and conditions to be included in contracts relating to the purchase or lease, provided the purchase or lease is based on the best value available and is in the state's best interest. In determining which products or services are in the state's best interest, the agency shall consider the following factors:

(1) installation costs and hardware costs;

(2) the overall life cycle cost of the system or equipment;

(3) estimated cost of employee training and estimated increase in employee productivity;

(4) estimated software and maintenance costs; and

(5) compliance with applicable statewide standards adopted by the Department of Information Resources or a subsequent entity as validated by criteria established by the department or a subsequent entity in administrative rule.

(e) The commission shall establish rules and regulations and implement the catalogue purchase procedure set forth in this section no later than January 1, 1994.

(f) Purchases of automated information systems shall be made through the catalogue procedure enumerated in this section unless the commission or state agency determines that the best value available accrues from an alternative purchase method authorized by this Act.

(g) The commission shall make the catalogue purchasing procedure enumerated in this section available to local governments who qualify for cooperative purchasing under Sections 271.082 and 271.083, Local

Government Code. In this subsection, "local government" has the meaning assigned to it by Section 271.081, Local Government Code.

SECTION 1.08. Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (4), (5), and (6) to read as follows:

(4) "Automated information systems" means any automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated, including computer software, awarded to a vendor by a state agency covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes), or any telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for the purpose of transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on that network.

(5) "Best value" means lowest overall cost of information systems based on the following factors including, but not limited to:

(A) purchase price;

(B) compatibility to facilitate exchange of existing data;

(C) capacity for expansion and upgrading to more advanced levels of technology;

(D) quantitative reliability factors;

(E) the level of training required to bring end-users to a stated level of proficiency;

(F) the technical support requirements for maintenance of data across a network platform and management of the network's hardware and software; and

(G) compliance with applicable statewide standards adopted by the Department of Information Resources or a subsequent entity as validated by criteria established by the department or a subsequent entity in administrative rule.

(6) "Qualified information systems vendor" means manufacturers or resellers of automated information systems who are authorized by the commission to publish catalogues of products and services which may be directly purchased by state agencies covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes).

SECTION 1.09. Section 10.05, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10.05. SHARING OF SERVICES OR FACILITIES. (a) Telecommunications facilities and services, to the extent feasible and desirable, shall be provided on an integrated or shared basis, or both, to avoid waste of state funds and manpower.

(b) The commission, the Department of Information Resources, and the comptroller shall develop, in coordination with The Texas A&M University System, The University of Texas System, other institutions of higher education, and other state agencies, a plan for a state telecommunications network that will effectively and efficiently meet the long-term voice, video, and computer communications requirements of state government.

The plan should recognize that all state agencies and institutions of higher education are a single entity for purposes of purchasing and determining tariffs. The plan shall incorporate efficiencies obtained through the use of shared transmission services and open systems architecture as they become available, building on existing systems as appropriate, and the developers of the plan shall make use of the technical expertise of the institutions of higher education and state agencies. The commission, department, and comptroller shall present to the governor and the legislature a comprehensive summary of the plan and its implementation schedule before September 1, 1994.

SECTION 1.10. Not later than January 1, 1995, the General Services Commission shall submit to the governor, lieutenant governor, and speaker of the house of representatives a report on the competitive sealed proposal process established by Section 3.0221, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by **H.B. 2626**, Acts of the 73rd Legislature, Regular Session, 1993, that includes:

(1) a list of all purchases made under the process during the state fiscal year ending August 31, 1994, including purchases by institutions and other agencies of higher education under authority delegated by the commission;

(2) an analysis of benefits and disadvantages of the process; and

(3) recommendations for improving the process.

SECTION 1.11. Article 5, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 5.265 to read as follows:

Sec. 5.265. COMMON SURETY OR INSURER. If it is advantageous to the state, the commission, or an agency whose project is exempted from all or part of this article under Section 5.13 of this article, may negotiate an arrangement with a surety or an insurer, as appropriate, authorized to do business in this state to furnish some or all of the bonds, insurance, or both that a contractor or subcontractor is required to execute or carry to receive a contract or subcontract on a project administered by the commission or other agency. Notwithstanding Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code), and its subsequent amendments, the commission or other agency may require a contractor or subcontractor to meet part or all of the bonding or insurance requirements for the project under the arrangement negotiated by the commission or other agency.

SECTION 1.12. Article 5, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 5.342 to read as follows:

Sec. 5.342. ACQUISITION OF EXISTING BUILDING AS ALTERNATIVE TO LEASING SPACE. (a) This section applies only to meeting office space needs of one or more state agencies in a county in which the state is leasing at least 50,000 square feet of usable office space.

(b) The commission may meet office space needs of one or more state agencies that are being met through leased space by purchasing one or more existing buildings in accordance with this section. The purchase of

a building may include the purchase of the building's grounds and related improvements. The purchase of a building under this section must be:

(1) financed through bonds issued by the Texas Public Finance Authority; and

(2) approved by the legislature if it is in session or by the Legislative Budget Board if the legislature is not in session.

(c) The commission may purchase a building under this section only if the commission determines that the projected annual total space occupancy costs of the purchased space will not exceed, over the term of the bonded indebtedness, the projected annual total space occupancy costs of meeting the same space needs through leased space. In this section, "total space occupancy costs" include:

(1) for leased space, the direct cost of the lease payments for the space;

(2) for purchased space, the direct cost of rental or installment payments for the space under Section 12(b), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes);

(3) the cost of any necessary renovations;

(4) operating costs, including janitorial and utility costs; and

(5) for purchased space, the cost of maintaining a cash replacement reserve sufficient to service structural maintenance requirements reflecting the expected performance life of the major capital expense items of the building for the term of the bonded indebtedness.

(d) If the commission has made the necessary determination under Subsection (c) of this section and the purchase has been approved by the legislature or the Legislative Budget Board under Subsection (b) of this section, the Texas Public Finance Authority shall issue and sell bonds to finance the purchase in accordance with the Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), and the commission may purchase the building in accordance with that Act and other applicable law. The limitation prescribed by Section 9, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), relating to the location of a building for which bonds may be issued and sold does not apply to financing the purchase of a building under this section.

(e) Any person from whom real property or any existing buildings or other improvements are purchased under this section shall provide to the commission the name and the last known address of each person who:

(1) owns record legal title to the property, buildings, or other improvements; or

(2) owns a beneficial interest in the property, buildings, or other improvements through a trust, nominee, agent, or any other legal entity.

(f) When a state agency vacates leased space to move into space in a building purchased under this section or when the leased space itself is purchased under this section, the money specifically appropriated by the legislature or the money available to and budgeted by the agency for lease payments for the leased space for the remainder of the biennium may be used only for rental or installment payments for the purchased space under Section 12(b), Texas Public Finance Authority Act (Article 601d, Vernon's

Texas Civil Statutes), and for the payment of operating expenses for the purchased space that are incurred by the commission. The comptroller may adopt rules for the administration of this subsection.

SECTION 1.13. Sections 4.15(c) and (m), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) Except as provided by this section and Article 6252-3e, Revised Statutes, the commission shall determine the amount of space in a building to be allocated to private tenants and the types of activities in which the tenants may engage based on the market for certain activities among employees and visitors in the building and in the vicinity of the building. Except as provided by Subsection (m) [~~(l)~~] of this section, the amount of space allocated to private tenants may not exceed 15 percent of the total space in the building. Any space leased to provide child care services for state employees shall not be counted in the 15 percent maximum.

(m) If the commission determines under Section 5.34 or 5.342 of this Act that the purchase of an existing building is more advantageous to the state than constructing [~~the construction of~~] a new building or continuing to lease space for a state agency, but a purchase of the building would be subject to existing leases to private tenants that exceed 15 percent of the total space in the building, the commission may purchase the building subject to existing leases notwithstanding Subsection (c) of this section. When an existing lease to a private tenant expires, the commission may renew the lease subject to this section, including Subsection (c).

SECTION 1.14. Section 9(b), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) When the acquisition or construction of a building has been authorized in accordance with this Act or under Section 5.34 or 5.342, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), the board shall promptly issue and sell bonds in the name of the authority under this Act, including Sections 10B and 16 of this Act, to finance the acquisition or construction of the building. When the proceeds from the bond issuance are available, the board shall promptly deposit the proceeds in the state treasury under Section 23 of this Act and shall promptly make the determinations that are to be made by the board under Section 23 of this Act.

SECTION 1.15. Section 10(a), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), as amended by Chapter 1244, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) Except as permitted by Sections 24A(b)(5) and 24A(d) of this Act or Section 5.34 or 5.342, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), before the board may issue and sell bonds, the legislature by law must have authorized in this Act, the General Appropriations Act, or another Act the specific project for which the bonds are to be issued and sold and must have authorized the estimated cost of the project or the maximum amount of bonded indebtedness that may be incurred by the issuance and sale of bonds for the project. In

recognition that the cost estimates for acquisition, construction, repair, or renovation of a project will not be final at the time the project is authorized for financing and that the bonds may be issued to fund associated costs, including but not limited to reasonably required reserve funds, capitalized interest, administrative costs of the authority, and issuing expenses, the principal amount of any bond issue for that purpose may be up to 1-1/2 the amount of the estimated cost for the project being financed. For additional costs to be included in that principal amount, the board must affirmatively find that those costs are necessary and reasonable at the time the bonds are issued.

SECTION 1.16. Section 481.105, Government Code, is transferred to Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), redesignated as Section 3.281, and amended to read as follows:

Sec. 3.281 [~~481.105~~]. PARTICIPATION by Small Businesses IN STATE PURCHASING. The commission [~~office~~] shall foster participation of small businesses in the purchasing activities of the state by:

(1) assisting state agencies in developing procedures to ensure the inclusion of small businesses on state agency master bid lists;

(2) informing small businesses of state purchasing opportunities;

(3) assisting small businesses in complying with the procedures for bidding on state contracts;

(4) working with state and federal agencies and with private organizations in disseminating information on state purchasing procedures and the opportunities for small businesses to participate in state contracts;

(5) assisting state agencies with the development of a comprehensive list of small businesses capable of providing materials, supplies, equipment, or services to the state; [~~and~~]

(6) making recommendations to state agencies for simplification of specifications and terms to increase the opportunities for small business participation;

(7) working with state agencies to establish a statewide policy for increasing use of small businesses;

(8) assisting state agencies in seeking small businesses capable of supplying materials and services that the agencies require;

(9) assisting state agencies in identifying and advising small businesses on the types of goods and services needed by the agencies; and

(10) assisting state agencies in increasing the volume of business placed with small businesses.

SECTION 1.17. On the effective date of this part, all powers, duties, and obligations of the Office of Small Business Assistance of the Texas Department of Commerce under Section 1.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), and under former Section 481.105, Government Code, are transferred to the General Services Commission as prescribed by this part. All records and property in the custody of the office that relate to a function transferred by this part are transferred to the commission. All appropriations to the office for functions transferred by this part and all employees of the office employed primarily to engage in those functions are transferred to the commission.

An application for certification as a disadvantaged business is transferred without change in status from the office to the commission. All rules, standards, and specifications of the office relating to the functions transferred by this part remain in effect as rules, standards, and specifications of the commission unless superseded by the commission.

SECTION 1.18. Subchapter B, Chapter 435, Government Code, is amended by adding Section 435.027 to read as follows:

Sec. 435.027. GRONER A. PITTS NATIONAL GUARD ARMORY. The Texas National Guard armory located in Brownwood, Texas, is named the Groner A. Pitts National Guard Armory in honor of Groner A. Pitts.

SECTION 1.19. The State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) is amended by adding Article 3A to read as follows:

ARTICLE 3A. CENTRAL AUTOMATED PURCHASING

Sec. 3A.01. STUDY AND DESIGN PROCESS. The commission and the comptroller shall jointly study and design a central automated purchasing system for use by state agencies. The design must be compatible with the uniform statewide accounting system and must allow state agencies to select goods or services from an automated catalogue, order the goods or services electronically, and enter electronically on the system the fact of receipt of the goods or services. The design must also allow an entry of receipt on the system to serve as an authorization for the comptroller to pay the vendor on verification that the agency is authorized by law to purchase the goods or services.

Sec. 3A.02. ASSISTANCE BY OTHER STATE AGENCIES. On the request of the commission or the comptroller, the Department of Information Resources and other state agencies shall assist the commission and the comptroller in the study and design process authorized by Section 3A.01 of this article.

Sec. 3A.03. REPORT TO LEGISLATURE. Not later than January 1, 1995, the commission and the comptroller shall each submit to the legislature a report containing the agency's recommendations relating to:

(1) the cost, feasibility, and advisability of implementing a central automated purchasing system as designed by the agencies; and

(2) other advisable changes that concern the state's methods of acquiring goods and services that would become feasible if the state implemented the central automated purchasing system.

Sec. 3A.04. RULES. The commission and the comptroller may adopt rules to administer this article.

Sec. 3A.05. EXPIRATION. This article expires on September 1, 1995.

SECTION 1.20. Sections 9(f) and (k), Information Resources Management Act (Article 4413(32j), Revised Statutes), are amended to read as follows:

(f) At the request of a state agency, the [~~The~~] department may provide technical and managerial assistance relating to information resources management, including automation feasibility studies, systems analysis, and design, training, and technology evaluation [~~at the request of a state agency~~].

(k) The department may [~~shall operate, on a self-supporting basis, a computer service facility and~~] provide computer services under interagency contracts to state agencies that choose to contract with the department [~~subscribe to the service~~].

SECTION 1.21. Section 13, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

Sec. 13. PERFORMANCE [~~Annual~~] REPORT. (a) Not later than November [~~February~~] 1 of each even-numbered year, the board shall review and approve and the department shall present a [~~department's annual~~] report on the use of information resources technologies by [~~management activities of~~] state government[~~, based on the annual performance reports submitted to the department by state agencies under Section 20 of this article~~]. The [~~annual~~] report must:

(1) assess the progress made toward meeting the goals and objectives of the state strategic plan for information resources management;

(2) describe major accomplishments of the state or a specific [~~and each~~] state agency in information resources management;

(3) describe major problems confronting the state or a specific state [~~the existing major data bases and applications in each~~] agency in information resources management;

(4) [~~describe all existing interagency computer networks;~~

[~~(5)~~] provide a summary of the total expenditures for information resources and information resources technologies by [~~each agency and~~] the state;

[~~(6) provide an inventory list, by major categories, of the state's information resources technologies;~~] and

(5) [~~(7) identify and~~] make recommendations for improving the effectiveness and cost efficiency of the state's use of information resources [~~regarding opportunities for multiagency information resources management activities~~].

(b) The [~~approved annual~~] report [~~of the department~~] shall be submitted to the governor and to the legislature [~~Legislative Budget Board~~].

(c) The department may make interim reports that it considers necessary.

(d) The department is entitled to obtain any information concerning a state agency's information resources and information resources technologies that the department determines is necessary to prepare a report under this section.

SECTION 1.22. Section 15, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

Sec. 15. PROJECT REVIEW. (a) In this section, "major information resources project" means any information resources technology project identified in a state agency's biennial operating plan with development costs that exceed $1,000,000 and that:

(1) requires one year or longer to reach operations status;

(2) involves more than one state agency; or

(3) substantially alters work methods of state agency personnel or the delivery of services to clients.

(b) A state agency may not expend appropriated funds for a major information resources project unless the project has been approved by the department in the agency's biennial operating plan.

(c) The department shall develop rules or guidelines for its review of major information resources projects. [~~INITIAL OPERATING PLANS. (a) Once each biennium, each state agency's information resources manager shall prepare an initial operating plan. An agency is not required to identify specific acquisitions or the method of acquisition in the plan. The plan must be approved by the governing body of the agency and submitted to the department for approval not later than the date that the agency is required to submit its first legislative appropriations request.~~

[~~(b) A state agency's initial operating plan must, for each request under each Legislative Budget Board assumption:~~

[~~(1) state how the agency's requested appropriations for the management, operation, and procurement of information resources would be spent;~~

[~~(2) contain a summary of the agency's needs for information resources technologies and the estimated cost of meeting those needs during the next biennium;~~

[~~(3) list the existing and proposed projects for the agency during the next biennium, including:~~

[~~(A) the anticipated measurable benefits of those projects and the measurement standards used to determine those benefits;~~

[~~(B) the major resources required to conduct the projects;~~

[~~(C) the agency's estimated total cost of each project by legislative program as found in the agency's legislative appropriations request;~~

[~~(D) the cost and implementation schedule for each stage of each project;~~

[~~(E) the number, type, approximate cost, schedule, and, if known, the planned method of acquisition for all procurements associated with each project that are subject to review under department rules; and~~

[~~(F) the estimated internal development costs for each project, including an allocation of costs for the use of fixed assets and an allocation for administrative costs;~~

[~~(4) provide an estimate, given the estimated work load, of the percentage of existing and proposed information resources technologies that will be required after all existing and proposed projects are implemented; and~~

[~~(5) any other information the department considers necessary.~~]

SECTION 1.23. Section 16, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

Sec. 16. BIENNIAL [~~Final~~] OPERATING PLANS. (a) Each state agency shall submit an [~~a final~~] operating plan to the department each state fiscal biennium not later than the 30th day after the date that the General Appropriations Act for the biennium becomes law [~~earliest of the following dates of each odd-numbered year:~~

[~~(1) September 1;~~

[~~(2) the 60th day after the date the General Appropriations Act becomes law if it becomes law on or before July 31 of that year; or~~

[~~(3) the 30th day after the date the General Appropriations Act becomes law if it becomes law after July 31 of that year~~].

(b) The [~~At a minimum, the~~] plan shall describe the agency's current and proposed projects for the biennium [~~must include, in addition to the information required in the initial operating plan, the following:~~

[~~(1) the amount of money related to information resources actually appropriated to the agency for the biennium beginning September 1; and~~

[~~(2) an identification of changes, if any, in the agency's priorities for projects and associated procurements as set forth in the initial operating plan~~].

(c) [~~The department may consult the comptroller to verify a state agency's approved funds.~~

[~~(d)~~] A state agency shall amend its biennial [~~final~~] operating plan when necessary to reflect changes in the plan during a biennium. [~~The plan shall also be amended if necessary to show the impact of a consulting services contract or report that may affect software development, hardware configuration, or changes in the agency's management of information resources. The substance of any amendment submitted to the plan must also be included in an appropriate approved agency strategic plan or approved agency strategic plan amendment.~~]

SECTION 1.24. Section 17, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

Sec. 17. PROCEDURES FOR SUBMITTING AND EVALUATING OPERATING PLANS. (a) The department by rule shall adopt instructions to guide state agencies in their preparation of biennial [~~initial operating plans and final~~] operating plans. The instructions must:

(1) specify the format of the plans;

(2) specify [~~require the submission of~~] the information required to be included in the plans [~~by this article~~]; [~~and~~]

(3) list the general criteria that the department will use to evaluate the plans; and

(4) specify procedures for the submission, review, approval, and disapproval of plans and amendments, including procedures for review or reconsideration of the department's disapproval of a plan or plan amendment.

(b) [~~The department shall notify a state agency in writing of the department's approval or disapproval of an initial operating plan. The notification shall be sent not later than 120 days after the date the department receives the plan.~~

[~~(c) The department shall notify a state agency in writing of the department's approval or disapproval of a final operating plan. The notification shall be sent not later than 30 days after the date the department receives the plan. If the department's determination is due after September 1 of an odd-numbered year, a state agency may operate as if the plan had been approved until the department actually makes its determination.~~

[~~(d) If the department disapproves a state agency's initial operating plan or final operating plan, the department shall provide to the agency in writing the reasons for the disapproval. If the agency cannot resolve the~~

~~problems that caused disapproval within 30 days after the date the notice of disapproval is received, the agency shall notify the department in writing of the reasons why the problems cannot be resolved. The notification shall be sent to the department not later than 30 days after the date that the agency receives notice of the department's disapproval.~~

[~~(e) Before a state agency may amend its final operating plan, the agency must submit the proposed amendment to the department for approval. All amendments affecting operations during a fiscal year must be submitted not later than June 1 of that fiscal year. The department shall notify the agency of the department's approval or disapproval not later than the 30th day after the date the proposed amendment is received. If the department disapproves a proposed amendment, the department shall state the reasons for the disapproval in writing to the agency's information resources manager. The department shall adopt rules for the procedures a state agency must follow when submitting a revision of proposed amendments to the department after the department has disapproved the amendments.~~

[~~(f) The department may not approve a state agency's initial operating plan or final operating plan unless the agency has submitted and the department has approved a current agency strategic plan.~~

[~~(g) A state agency that disagrees with the department's disapproval of an initial operating plan, final operating plan, or an amendment to either of those plans may submit a written request to the department for special review. On receipt of a request, the executive director shall inform the board. The board shall consider the merits of the agency's position and make its decision on the matter at the next regularly scheduled board meeting. The state agency may appear and present its position at that meeting. The decision of the board is final. The board shall adopt rules for the fair and efficient administration of this subsection.~~

[~~(h)~~] Each state agency shall submit a copy of its biennial [~~final~~] operating plan, as approved by the department, to the governor, the Legislative Budget Board, and the state auditor not later than 30 days after the date that the department approves the plan. If an agency fails to comply with this subsection, the governor may direct the comptroller to deny the agency access to the agency's appropriations that relate to the management of information resources. The denial of access may continue until the governor is satisfied with the agency's compliance with this subsection.

[~~(i) As a consequence of evaluating an initial operating plan or a final operating plan, the department may require a state agency to submit or obtain certain information as part of its procurement process. This may be required when:~~

[~~(1) an agency is planning a noncompetitive procurement;~~

[~~(2) an agency is planning a system conversion; or~~

[~~(3) the department determines that the information would be necessary or appropriate.~~]

SECTION 1.25. Section 19, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

Sec. 19. INFORMATION RESOURCES MANAGERS. (a) The person required to sign an agency's strategic plan, or that person's designee, shall serve as the agency's information resources manager. A member of the board of the department may not also serve as the information resources manager of a state agency.

(b) [~~If the department performs substantially all information processing for a state agency, the agency may designate the department as the agency's information resources manager. The department may by rule define the circumstances in which it may serve as an agency's information resources manager.~~]

[~~(c)~~] Each state agency shall cooperate as necessary with its information resources manager to enable that person to perform the duties required of the information resources manager by law.

(c) [~~(d)~~] The department shall provide guidelines to state agencies regarding the initial and continuing education requirements needed for information resources managers [~~not later than September 1, 1990, to be effective on September 1, 1992~~]. Any person who is appointed the information resources manager of a state agency before September 1, 1992, is exempt from the requirements of the department regarding initial education needed for that position. The department may provide educational materials and seminars for state agencies and information resources managers.

(d) [~~(e)~~] The information resources manager is responsible for the preparation of the operating plans under Sections 16-17 [~~15-17~~] of this article[~~; and the annual performance report under Section 20 of this article~~].

SECTION 1.26. The Information Resources Management Act (Article 4413(32j), Revised Statutes) is amended by adding Section 18A to read as follows:

Sec. 18A. INTERAGENCY CONTRACTS. (a) A state agency may not enter into an interagency contract for the receipt of information resources technologies, including a contract with the department, unless the agency complies with this section.

(b) A state agency that proposes to receive information resources technologies under a contract with another state agency must first give public notice of a request for proposals or a request for bids.

(c) A state agency may not enter into an interagency contract to receive information resources technologies if the agency receives a bid or proposal under Subsection (b) of this section under which the agency can receive the same or substantially the same technologies from a private vendor for less than the cost that would be incurred by the agency under the interagency contract. If a bid or proposal is received under Subsection (b) of this section that would allow the agency to accomplish the application or project at an acceptable level of quality and for an acceptable period for a total cost to the state of less than the total cost to the state of the best proposed interagency contract, as that cost is determined by the department, a contract for the accomplishment of the application or project shall be awarded to the bidder with the lowest and

best bid, or the offeror whose proposal is most advantageous to the state as determined from competitive sealed proposals.

(d) The department by rule may define circumstances in which certain interagency contracts that will cost less than a minimum amount established by the department are excepted from the requirements of this section or this article, if the department determines that it would be more cost effective for the state.

SECTION 1.27. Section 26, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

Sec. 26. APPLICATION TO STATE LOTTERY OPERATIONS. (a) The lottery division in the office of the comptroller is not included in the agency strategic plan[~~, initial operating plan,~~] or biennial [~~final~~] operating plan of the comptroller. The lottery division is not subject to the planning and procurement requirements of this Act.

(b) The electronic funds transfer system for the operation of the state lottery is not included in the agency strategic plan[~~, initial operating plan,~~] or biennial [~~final~~] operating plan of the state treasurer. Operations of the state treasurer that relate to the state lottery are not subject to the planning and procurement requirements of this Act.

SECTION 1.28. (a) Sections 18 and 20, Information Resources Management Act (Article 4413(32j), Revised Statutes), are repealed.

(b) Section 3.021, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is repealed.

SECTION 1.29. (a) Effective August 31, 1994, Sections 21 and 22, Information Resources Management Act (Article 4413(32j), Revised Statutes), are repealed. On that date, all amounts in the Department of Information Resources revolving fund account established under Section 22, Information Resources Management Act (Article 4413(32j), Revised Statutes), are transferred to the undedicated portion of the general revenue fund.

(b) Before August 31, 1994, the Department of Information Resources shall assist state agencies that use the department's services under Section 21, Information Resources Management Act (Article 4413(32j), Revised Statutes), to obtain suitable alternative services.

SECTION 1.30. This part takes effect immediately.

PART 2. ABOLITION OF TEXAS SURPLUS PROPERTY AGENCY

SECTION 2.01. Section 2.06(c), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The executive director shall employ two associate deputy directors, who shall administer the operation of the divisions of the commission, except the surplus and salvage property division, as provided by this Act. The commission shall:

(1) employ a third associate deputy director to administer the operation of the surplus and salvage property division as provided by this Act, and that associate deputy director serves at the pleasure of the commission; or

(2) assign the duty to administer the surplus and salvage property division directly to the executive director, who shall directly administer

that division subject to and under the direction of the commission.

SECTION 2.02. Section 2.09, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.09. DIVISIONS. (a) The commission is divided into divisions as provided by this section. The associate deputy director employed to administer the surplus and salvage property division shall direct that division as provided by Subsection (c) of this section. Another [~~One~~] associate deputy director shall direct the travel division and other divisions as directed by the executive director. The other associate deputy director shall direct the remaining divisions as directed by the executive director.

(b) Each division shall be managed by a division director who shall report to the appropriate associate deputy director, except as provided by Subsection (c) of this section.

(c) The surplus and salvage property division is established to administer Article 9 of this Act. Notwithstanding Section 2.06(b) of this Act, and unless the commission assigns the duty to administer the division directly to the executive director, the affairs of the division are managed by the associate deputy director of that division, whose management is subject to and under the direction of the commission and who reports directly to the commission. All direction of the commission to the associate deputy director shall be made at an open meeting of the commission and made a part of the minutes of the commission. The division may share support functions with other divisions of the commission, but the division shall operate autonomously from the rest of the commission, and the administration of the division must be housed in a different building than other commission functions. If the commission assigns the duty to administer the division directly to the executive director, the division must still operate autonomously from the rest of the commission, and, except for the executive director's office, the administrative functions of the division must still be housed in a different building from other commission functions.

SECTION 2.03. Section 8.01(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) This article applies to:

(1) personal property belonging to the state; and

(2) real or personal property acquired by or otherwise under the commission's jurisdiction under Section 9.16 of this Act and 40 U.S.C. Section 483c, 484(j), or 484(k).

SECTION 2.04. Section 9.01(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Subdivisions (3) and (4) and adding Subdivision (8) to read as follows:

(3) "Property" means personal property. The term does not include real property, or any interest in real property, except federal real property acquired under Section 9.16 of this article and Section 484(k), Federal Property and Administrative Services Act. Personal[~~; however, personal~~] property affixed to real property may be sold under this law if

its removal and disposition is to carry out a lawful objective under this law or any other law. The term includes property lawfully confiscated and subject to disposal by a state agency.

(4) "Surplus property":

(A) means:

(i) any personal property which is in excess of the needs of any state agency and which is not required for its foreseeable needs; or

(ii) federal surplus property acquired by the commission or otherwise under the commission's jurisdiction under Section 9.16 of this article and Section 483c, 484(j), or 484(k), Federal Property and Administrative Services Act; and

(B) includes property that[~~: Surplus property~~] may be used or new but possesses some usefulness for the purpose for which it was intended or for some other purpose.

(8) "Federal Property and Administrative Services Act" means the Federal Property and Administrative Services Act of 1949 (40 U.S.C. Section 484).

SECTION 2.05. Section 9.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9.02. ESTABLISHMENT OF PROCEDURES. The commission shall establish and maintain procedures for the transfer, sale, or disposal, as prescribed by law, of:

(1) surplus and salvage property no longer needed by state agencies; and

(2) federal surplus property that the state acquires under the Federal Property and Administrative Services Act.

SECTION 2.06. Section 9.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9.03. MAILING LISTS OF ASSISTANCE ORGANIZATIONS AND POLITICAL SUBDIVISIONS. The commission shall maintain a mailing list, renewable annually, of assistance organizations and political subdivision purchasing agents or other officers performing similar functions who have asked for information on surplus or salvage equipment or material the state may have available. [~~The commission shall provide the list to the Texas Surplus Property Agency.~~]

SECTION 2.07. Section 9.05(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) If surplus or salvage property of a state agency is not disposed of under the provisions of Section 9.04 of this article, the commission shall sell the property by competitive bid or auction or delegate to the state agency having possession of the property the authority to sell the property on a competitive bid basis. The commission or agency shall collect a fee from the purchaser. The commission shall set the fee in an amount to recover the costs associated with the sale of the property, but the amount

may not be less than two percent nor more than 12 percent of the proceeds from the sale of the property.

SECTION 2.08. Section 9.13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9.13. EXEMPTION. For purposes of this article the terms "surplus" and "salvage" shall not apply to products and by-products of research, forestry, agricultural, livestock, and industrial enterprises [~~in excess of that quantity required for consumption by the producing agency when such agencies have a continuing and adequate system of marketing research and sales, the efficiency of which shall be certified to the commission by the state auditor. A qualifying agency shall furnish the commission with a copy of the rules and regulations and latest revisions thereof promulgated by the policy making body of each agency or institution for the guidance and administration of the programs enumerated herein. When requested by such agency or institution to do so, the commission shall dispose of the property as provided for in this article~~].

SECTION 2.09. Section 9.14, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9.14. AUTHORIZATION OF AGENCIES TO DISPOSE OF PROPERTY. The commission may authorize an agency to dispose of surplus or salvage property where the agency demonstrates to the commission its ability to make such disposition under the rules and regulations set up by the commission, as provided for herein. State eleemosynary institutions and institutions and agencies of higher learning shall be excepted from the terms of this article that relate to the disposition of their surplus or salvage property.

SECTION 2.10. Article 9, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Sections 9.16 and 9.17 to read as follows:

Sec. 9.16. FEDERAL SURPLUS PROPERTY. (a) The commission is the designated state agency under Section 484(j) of the Federal Property and Administrative Services Act.

(b) The commission may:

(1) acquire and warehouse federal property allocated to the commission under the Federal Property and Administrative Services Act; and

(2) distribute the property:

(A) to an entity or institution that meets the qualifications for eligibility for the property under the Federal Property and Administrative Services Act; and

(B) without complying with the provisions of this article that relate to the disposition of surplus state agency property.

(c) The commission may:

(1) disseminate information and assist a potential applicant regarding the availability of federal surplus real property;

(2) assist in the processing of an application for acquisition of federal real property and related personal property under Section 484(k) of the Federal Property and Administrative Services Act;

(3) assist in assuring use of the property; and

(4) engage in an activity relating to the use of federal surplus property by another state agency, institution, or organization engaging in or receiving assistance under a federal program.

(d) The commission shall:

(1) file a state plan of operation that complies with federal law and operate in accordance with the plan;

(2) take necessary action to meet the minimum standards for a state agency in accordance with the Federal Property and Administrative Services Act; and

(3) cooperate to the fullest extent consistent with this section.

(e) The commission may:

(1) make the necessary certifications and undertake necessary action, including an investigation;

(2) make expenditures or reports that may be required by federal law or regulation or that are otherwise necessary to provide for the proper and efficient management of the commission's functions under this section;

(3) provide information and reports relating to the commission's activities under this section that may be required by a federal agency or department; and

(4) adopt rules necessary for the efficient operation of its activities under this section or as may be required by federal law or regulation.

(f) The commission may enter into an agreement, including:

(1) a cooperative agreement with a federal agency under Section 484(n) of the Federal Property and Administrative Services Act;

(2) an agreement with a state agency for surplus property of a state agency that will promote the administration of the commission's functions under this section; or

(3) an agreement with a group or association of state agencies for surplus property that will promote the administration of the commission's functions under this section.

(g) The commission may act as an information clearinghouse for an entity or institution that may be eligible to acquire federal surplus property and may assist, as necessary, the entity or institution to obtain federal surplus property.

(h) The commission may:

(1) acquire and hold title or make capital improvements to real property in accordance with Subsection (i) of this section; or

(2) make an advance payment of rent for a distribution center, office space, or another facility that is required to carry out the commission's functions under this section.

(i) The commission may collect a service charge for the commission's acquisition, warehousing, distribution, or transfer of property. The commission may not collect a charge for real property in an amount that is greater than the reasonable administrative cost the commission incurs in transferring the property.

(j) A charge collected under Subsection (i) of this section shall be deposited in the state treasury to the credit of the surplus property service charge fund, and income earned on money in the surplus property service

charge fund shall be credited to that fund. Money in the fund may be used only to carry out the functions of the commission under this section.

(k) The commission may appoint advisory boards and committees necessary and suitable to administer this section.

(l) The commission may employ, compensate, and prescribe the duties of personnel, other than members of advisory boards and committees, necessary and suitable to administer this section. A personnel position may only be filled by an individual selected and appointed on a nonpartisan merit basis.

Sec. 9.17. ADMINISTRATIVE COST RECOVERY STUDY. The commission shall conduct a study to determine if its functions under this article can be made self-supporting by charging fees for commission services. If the commission determines that a function can be made self-supporting through charging fees, the commission shall prepare a fee implementation plan. Before January 1, 1995, the commission shall report to each member of the legislature the results of the study and the implementation plan for fee recovery, if any. This section expires January 1, 1995./

SECTION 2.11. Section 403.271(a), Government Code, is amended to read as follows:

(a) This subchapter applies to:

(1) all personal property belonging to the state; and

(2) real and personal property acquired by or otherwise under the jurisdiction of the state under 40 U.S.C. Section 483c, 484(j), or 484(k), and Section 9.16, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

SECTION 2.12. (a) The General Services Commission and the Texas Surplus Property Agency shall coordinate the transfer of all Texas Surplus Property Agency functions to the General Services Commission as required by this part. The administrative functions of the Texas Surplus Property Agency are transferred to the General Services Commission to be carried out by staff located in Austin, in accordance with the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by this Act.

(b) The transfer of all functions from the Texas Surplus Property Agency to the General Services Commission shall be accomplished as soon as practicable, but not later than the 45th day after the effective date of this part, at which time the Texas Surplus Property Agency is abolished.

(c) The transfer required by this part includes the transfer of all assets, duties, powers, obligations, and liabilities, including contracts, leases, real or personal property, funds, employees, furniture, computers and other equipment, and files and related materials used by the Texas Surplus Property Agency.

(d) A form, rule, or procedure adopted by the Texas Surplus Property Agency that is in effect on the effective date of this part remains in effect on and after that date as if adopted by the General Services Commission until amended, repealed, withdrawn, or otherwise superseded by the commission.

(e) All unexpended appropriations made to the Texas Surplus Property Agency are transferred to the General Services Commission.

(f) Notwithstanding Subsections (b) and (e) of this section and Section 2.13 of this Act:

(1) to the extent that changes in law made by this Act are changes that must be approved by the federal government under federal law relating to surplus property as a condition of this state's full participation in the federal surplus property program, the appropriate prior law is continued in effect until the necessary approval is received; and

(2) if the abolition of the Texas Surplus Property Agency and the transfer of its functions under this Act must be approved by the federal government under federal law relating to surplus property as a condition of this state's full participation in the federal surplus property program, the Texas Surplus Property Agency and the law under which it performs its functions are continued in effect until the necessary approval is received.

SECTION 2.13. The following laws are repealed:

(1) Chapter 32, Acts of the 62nd Legislature, Regular Session, 1971 (Article 6252-6b, Vernon's Texas Civil Statutes); and

(2) Subsections (d), (e), and (g), Section 9.04, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

SECTION 2.14. This part takes effect September 1, 1993, except that:

(1) the amendment to Section 403.271(a), Government Code, takes effect when Subchapter L, Chapter 403, Government Code, as added by Section 2.30, Chapter 8, Acts of the 72nd Legislature, 2nd Called Session, 1991, takes effect; and

(2) the amendment to Section 8.01(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), does not take effect if on or before September 1, 1993, Article 8, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is repealed on certification by the comptroller of the implementation of the fixed asset component of the uniform statewide accounting system, in accordance with Section 6.01(d), Chapter 8, Acts of the 72nd Legislature, 2nd Called Session, 1991.

PART 3. TRAVEL

SECTION 3.01. Section 14.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14.01. DIVISION. The travel division of the commission is composed of the central travel office and the office of vehicle fleet maintenance. The commission shall adopt rules to implement this article, including rules related to:

(1) the structure of travel agency contracts that the commission makes;

(2) the procedures the commission uses in requesting and evaluating bids or proposals for travel agency contracts from providers; [~~and~~]

(3) the use of negotiated contract rates for travel services by state agencies; and

(4) exemptions from the prohibition prescribed by Section 14.02(d) of this article.

SECTION 3.02. Sections 14.02(b) and (c), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The central travel office shall initially provide services to designated agencies located in Travis County and shall extend its services to all state agencies as it develops the capability to do so. The office may negotiate contracts with private travel agents, with travel and transportation providers, and with credit card companies that provide travel services and other benefits to the state. The commission shall make contracts with more than one provider of travel agency services. Contracts entered into under this section are not subject to the competitive bidding requirements imposed under Article 3 of this Act. The comptroller of public accounts shall audit travel vouchers in accordance with Chapter 403, Government Code, and its subsequent amendments, for compliance with [~~of~~] rules adopted to enforce the provisions of this section.

(c) State agencies in the executive branch of state government shall participate in accordance with commission rules in the commission's contracts for travel services. Institutions[~~, provided that institutions~~] of higher education as defined by Section 61.003, Education Code, shall not be required to participate in the commission's contracts for travel agency services or other travel services purchased from funds other than general revenue funds or educational and general funds as defined by Section 51.009, Education Code. The commission may provide by rule for exemptions from required participation. Agencies of the state that are not required to participate in commission contracts for travel services may participate as provided by Subsection (a) of this section.

SECTION 3.03. Section 14.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subsections (d) and (e) to read as follows:

(d) This subsection applies only to a state agency in the executive branch of state government that is required to participate in the commission's contracts for travel services. Except as provided by commission rule, a state agency may not:

(1) purchase commercial airline or rental car transportation if the amount of the purchase exceeds the amount of the central travel office's contracted fares or rates; or

(2) reimburse a person for the purchase of commercial airline or rental car transportation for the amount that exceeds the amount of the central travel office's contracted fares or rates.

(e) The commission shall educate state agencies about Subsection (d) of this section. The comptroller shall audit travel vouchers in accordance with Chapter 403, Government Code, and its subsequent amendments, for compliance with Subsection (d) of this section. To facilitate the audit of the travel vouchers, the commission shall consult with the comptroller before the commission adopts rules or procedures under Subsection (d) of this section.

SECTION 3.04. This part takes effect September 1, 1993, except that Sections 3.01 and 3.03 of this part take effect January 1, 1994.

PART 4. MAIL

SECTION 4.01. Article 11, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 11.021 to read as follows:

Sec. 11.021. OUTGOING FIRST-CLASS MAIL. (a) This section applies only to outgoing first-class mail practices of state agencies located in Travis County.

(b) The commission shall evaluate the outgoing first-class mail practices of state agencies located in Travis County, including the lists, systems, and formats used to create mail. The commission shall adopt rules for the state agencies to implement this section.

(c) The commission shall achieve the maximum available discount on postal rates in all cases in which acceptable levels of timeliness, security, and quality of service can be maintained notwithstanding the discounted rate.

(d) A state agency to which this section applies shall consult with the commission before the agency may:

(1) purchase, upgrade, or sell mail processing equipment;

(2) contract with a private entity for mail processing; or

(3) take actions that significantly affect the agency's first-class mail practices.

(e) The commission by interagency contract shall establish a fee-for-service structure to charge and collect fees from each state agency to which this section applies for the commission's services under this section. The total amount charged a state agency under this section shall not exceed the amount of the agency's appropriated funds for outgoing first-class mail, as determined by the Legislative Budget Board, minus the agency's fixed costs for these services. The commission shall transfer to the general revenue fund the amount of a fee charged a state agency under this subsection that is greater than the amount of the commission's actual expenses for performing services for the agency.

(f) The commission shall adopt and distribute to each state agency to which this section applies guidelines by which state outgoing first-class mail practices may be measured and analyzed, using, to the extent possible, the services of the United States Postal Service. The commission shall review and update these guidelines not less often than once every two years after the date of the adoption of the guidelines. Not later than the 90th day after the date of the distribution of the initial guidelines and not less often than annually after the date of that distribution, the commission shall provide training to state agency personnel who handle first-class mail. The commission, to the extent possible, may use the free training provided by the United States Postal Service.

(g) If the commission determines that the upgrade of existing mail production or processing equipment or the purchase of new mail production or processing equipment is required to improve the outgoing first-class mail practices of the commission or other state agencies located in Travis

County, the commission shall prepare a cost-benefit analysis demonstrating that the upgrade or purchase is more cost-effective than contracting with a private entity to provide that equipment or mail service. The commission shall approve the most cost-effective method.

(h) A cost-benefit analysis prepared under this section and a request for bids or a request for proposals prepared to implement a course of action under this section shall be sent to the state auditor for review and comment as soon as practicable after preparation. The state auditor's office shall perform its review and offer its comments not later than the 14th working day after the day it receives the analysis or the request for bids or proposals.

(i) Not later than February 1, 1995, the commission shall report to the legislature all significant changes in first-class mail practices under this section. The report shall include a discussion of funds transferred to the general revenue fund under Subsection (e) of this section. This subsection expires June 1, 1995.

SECTION 4.02. This part takes effect immediately.

PART 5. EMERGENCY

SECTION 5.01. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 273

Senator Harris of Dallas submitted the following Conference Committee Report:

Austin, Texas
May 28, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 273** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS OF DALLAS	WOLENS
PARKER	SHIELDS
SIBLEY	SIEBERT
	LONGORIA
	CRABB
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1185

Senator Shelley submitted the following Conference Committee Report:

Austin, Texas
May 28, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1185** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHELLEY	McCALL
SHAPIRO	CAMPBELL
BROWN	HAMRIC
HENDERSON	GUTIERREZ
ARMBRISTER	CHISUM
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1477

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1477** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ARMBRISTER	LEWIS
TRUAN	YOST

MADLA	COUNTS
SIMS	LINEBARGER
LUNA	HOLZHEAUSER
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the creation, administration, powers, duties, operation, and financing of the Edwards Aquifer Authority and the management of the Edwards Aquifer; granting the power of eminent domain; authorizing the issuance of bonds; providing civil and administrative penalties; and validating the creation of the Uvalde County Underground Water Conservation District.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1

SECTION 1.01. FINDINGS AND DECLARATION OF POLICY. The legislature finds that the Edwards Aquifer is a unique and complex hydrological system, with diverse economic and social interests dependent on the aquifer for water supply. In keeping with that finding, the Edwards Aquifer is declared to be a distinctive natural resource in this state, a unique aquifer, and not an underground stream. To sustain these diverse interests and that natural resource, a special regional management district is required for the effective control of the resource to protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries, and the economic development of the state. Use of water in the district for beneficial purposes requires that all reasonable measures be taken to be conservative in water use.

SECTION 1.02. CREATION. (a) A conservation and reclamation district, to be known as the Edwards Aquifer Authority, is created in all or part of Atascosa, Bexar, Caldwell, Comal, Guadalupe, Hays, Medina, and Uvalde counties. A confirmation election is not necessary. The authority is a governmental agency and a body politic and corporate.

(b) The authority is created under and is essential to accomplish the purposes of Article XVI, Section 59, of the Texas Constitution.

SECTION 1.03. DEFINITIONS. In this article:

(1) "Aquifer" means the Edwards Aquifer, which is that portion of an arcuate belt of porous, water-bearing, predominately carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone extending from west to east to northeast from the hydrologic division near Brackettville in Kinney County that separates underground flow toward the Comal Springs and San Marcos Springs from underground flow to the Rio Grande Basin, through Uvalde, Medina, Atascosa, Bexar, Guadalupe, and Comal counties, and in Hays County south of the hydrologic division near Kyle that separates flow toward the San Marcos River from flow to the Colorado River Basin.

(2) "Augmentation" means an act or process to increase the amount of water available for use or springflow.

(3) "Authority" means the Edwards Aquifer Authority.

(4) "Beneficial use" means the use of the amount of water that is economically necessary for a purpose authorized by law, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.

(5) "Board" means the board of directors of the authority.

(6) "Commission" means the Texas Natural Resource Conservation Commission.

(7) "Conservation" means any measure that would sustain or enhance water supply.

(8) "Diversion" means the removal of state water from a watercourse or impoundment.

(9) "Domestic or livestock use" means use of water for:

(A) drinking, washing, or culinary purposes;

(B) irrigation of a family garden or orchard the produce of which is for household consumption only; or

(C) watering of animals.

(10) "Existing user" means a person who has withdrawn and beneficially used underground water from the aquifer on or before June 1, 1993.

(11) "Industrial use" means the use of water for or in connection with commercial or industrial activities, including manufacturing, bottling, brewing, food processing, scientific research and technology, recycling, production of concrete, asphalt, and cement, commercial uses of water for tourism, entertainment, and hotel or motel lodging, generation of power other than hydroelectric, and other business activities.

(12) "Irrigation use" means the use of water for the irrigation of pastures and commercial crops, including orchards.

(13) "Livestock" means animals, beasts, or poultry collected or raised for pleasure, recreational use, or commercial use.

(14) "Municipal use" means the use of water within or outside of a municipality and its environs whether supplied by a person, privately owned utility, political subdivision, or other entity, including the use of treated effluent for certain purposes specified as follows. The term includes:

(A) the use of water for domestic use, the watering of lawns and family gardens, fighting fires, sprinkling streets, flushing sewers and drains, water parks and parkways, and recreation, including public and private swimming pools;

(B) the use of water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands; and

(C) the application of treated effluent on land under a permit issued under Chapter 26, Water Code, if:

(i) the primary purpose of the application is the treatment or necessary disposal of the effluent;

(ii) the application site is a park, parkway, golf course, or other landscaped area within the authority's boundaries; or

(iii) the effluent applied to the site is generated within an area for which the commission has adopted a rule that prohibits the discharge of the effluent.

(15) "Order" means any written directive carrying out the powers and duties of the authority under this article.

(16) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(17) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of any water in the state, or the contamination of any water in the state, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, property, or public health, safety, or welfare or that impairs the usefulness of the public enjoyment of the water for any lawful or reasonable purpose.

(18) "Recharge" means increasing the supply of water to the aquifer by naturally occurring channels or artificial means.

(19) "Reuse" means authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before the water is discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

(20) "Underground water" has the meaning assigned by Section 52.001, Water Code.

(21) "Waste" means:

(A) withdrawal of underground water from the aquifer at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) the flowing or producing of wells from the aquifer if the water produced is not used for a beneficial purpose;

(C) escape of underground water from the aquifer to any other reservoir that does not contain underground water;

(D) pollution or harmful alteration of underground water in the aquifer by salt water or other deleterious matter admitted from another stratum or from the surface of the ground;

(E) wilfully or negligently causing, suffering, or permitting underground water from the aquifer to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26, Water Code;

(F) underground water pumped from the aquifer for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or

(G) for water produced from an artesian well, "waste" has the meaning assigned by Section 11.205, Water Code.

(22) "Well" means a bored, drilled, or driven shaft or an artificial opening in the ground made by digging, jetting, or some other method where the depth of the shaft or opening is greater than its largest surface dimension, but does not include a surface pit, surface excavation, or natural depression.

(23) "Well J-17" means state well number AY-68-37-203 located in Bexar County.

(24) "Well J-27" means state well number YP-69-50-302 located in Uvalde County.

(25) "Withdrawal" means an act or a failure to act that results in taking water from the aquifer by or through man-made facilities, including pumping, withdrawing, or diverting underground water.

SECTION 1.04. BOUNDARIES. The authority includes the territory contained within the following area:

(1) all of the areas of Bexar, Medina, and Uvalde counties;

(2) all of the area of Comal County, except that portion of the county that lies North of the North line through the county of Subdivision No. 1 of the Underground Water Reservoir in the Edwards Limestone, Balcones escarpment area, as defined by the order of the Board of Water Engineers dated January 10, 1957;

(3) the part of Caldwell County beginning with the intersection of Hays County Road 266 and the San Marcos River;

THENCE southeast along the San Marcos River to the point of intersection of Caldwell, Guadalupe, and Gonzales counties;

THENCE southeast along the Caldwell-Gonzales County line to its intersection with U.S. Highway 183;

THENCE north along U.S. Highway 183 to its intersection with State Highway 21;

THENCE southwest along State Highway 21 to its intersection with Hays County Road 266;

THENCE southwest along Hays County Road 266 to the place of beginning;

(4) the part of Hays County beginning on the northwest line of the R. B. Moore Survey, Abstract 412, in Comal County where it crosses the Comal County-Hays County line northeast along the northwest line of said Survey to the northeast corner of said Survey in Hays County, Texas;

THENCE southeast in Hays County, Texas across the Jas. Deloach Survey, Abstract 878, to the most westerly northwest corner of the Presidio Irrigation Co. Survey, Abstract 583;

THENCE northeast along the northwest line of said Survey to its most northerly northwest corner;

THENCE continuing in the same line across the R.S. Clayton Survey 2, Block 742, to the west line of the H. & G. N. RR. Co. Survey 1, Abstract 668;

THENCE north along the west line of said Survey to its northwest corner;

THENCE east along the north line of said Survey to its northeast corner;

THENCE northeast across the David Wilson Survey 83, Abstract 476, to the southeast corner of the F. W. Robertson Survey 71, Abstract 385;

THENCE north along the east line of said Survey to the southwest corner of the Benjamin Weed Survey 72, Abstract 483;

THENCE east along the south line of said Survey to its southeast corner;

THENCE northeast across the William Gray Survey 73, Abstract 92, and the Murray Bailey Survey 75, Abstract 42, to the southwest corner of the D.Holderman Survey 33, Abstract 225;

THENCE north along the west line of said Survey to its northwest corner;

THENCE continuing in the same line to the north line of the Day Land & Cattle Co. Survey 672;

THENCE west along said north line of said Survey to its northwest corner, which is in the east line of the Jesse Williams Survey 4 to the northeast corner of said Survey;

THENCE west along the north line of said Survey to the Southwest corner of the Amos Singleton Survey 106, Abstract 410;

THENCE north along the west lines of said Amos Singleton Survey 106 and the Watkins Nobles Survey 107, Abstract 346, to the northwest corner of said Watkins Nobles Survey 107;

THENCE east along the north line of said Survey to the southwest corner of the Jesusa Perez Survey 14, Abstract 363;

THENCE north along the west line of said Jesusa Perez Survey 14 to its northwest corner;

THENCE east along the north line of said Survey to its northeast corner;

THENCE, south along the east line of said Survey for a distance of approximately 10,000 feet to its intersection with Ranch Road 150;

THENCE, east by southeast along Ranch Road 150 approximately 24,500 feet to its intersection with the southern boundary line of the Andrew Dunn Survey 9, Abstract 4;

THENCE, east along the south line of said survey as it extends and becomes the southern boundary line of the Morton M. McCarver Survey 4, Abstract 10, for a distance of approximately 7,000 feet to its intersection with Ranch Road 2770;

THENCE, south on Ranch Road 2770 for a distance of approximately 400 feet to its intersection with Farm-to-Market Road 171;

THENCE, east along Farm-to-Market Road 171 for a distance of approximately 10,500 feet to its intersection with Farm-to-Market Road 25;

THENCE, north by northeast along Farm-to-Market Road 25 for a distance of approximately 3,100 feet to its intersection with Farm-to-Market Road 131;

THENCE, east by southeast along Farm-to-Market Road 131 for a distance of approximately 3,000 feet to its intersection with the east line of the Thomas G. Allen Survey, Abstract 26;

THENCE south along the east line of said Thomas G. Allen Survey to the most northerly northwest corner of the Elisha Pruett Survey 23, Abstract 376;

THENCE southwest along a west line of said Elisha Pruett Survey 23 to the west corner of said Survey;

THENCE southeast along the southwest line of said Survey to the north corner of the John Stewart Survey, Abstract 14;

THENCE southwest along the northwest line of said John Stewart Survey to its west corner;

THENCE continuing in the same line to the most northerly southwest line of the John Jones Survey, Abstract 263;

THENCE southeast along said southwest line to an interior corner of said John Jones Survey;

THENCE southwest along the most southerly northwest line of said Survey to the southwest corner of said Survey;

THENCE southeast along the south line of said Survey to the north corner of the James W. Williams Survey 11, Abstract 473;

THENCE southwest along the northwest line of said James W. Williams Survey 11 to its west corner;

THENCE southeast along the southwest line of said Survey to the north right-of-way line of the I. & G. N. RR.;

THENCE southwest along said right-of-way of said I. & G. N. RR. to the Hays County-Comal County line;

THENCE south along said county line to the northwest line of the R. B. Moore Survey, Abstract 412, in Hays County where it crosses the Hays County-Comal County line;

(5) all of the territory of Hays County contained within the following described area:

Beginning on the most southern point of Hays County at the intersection of Hays, Comal, and Guadalupe Counties; then continuing in a northeasterly direction along the Hays-Guadalupe county line to its intersection with the Hays-Caldwell county line; then continuing along the Hays-Caldwell county line to an intersection with Farm-to-Market Road 150; then continuing in a northwesterly direction along Farm-to-Market Road 150 to the intersection with the existing southern boundary of the part of Hays County described in Subdivision (4) of this section; then continuing in a southwesterly direction along the existing southern boundary of the part of Hays County described in Subdivision (4) of this section to the intersection with the Hays-Comal county line; then continuing in a southerly direction along the Hays-Comal county line to the point of beginning;

(6) the part of Guadalupe County beginning at the Guadalupe County-Caldwell County-Hays County line at the San Marcos River in the northeast corner of Guadalupe County, Texas.

THENCE southwest along the Guadalupe County-Hays County line to the intersect of the Guadalupe County-Hays County-Comal County line.

THENCE southwest along the Guadalupe County-Comal County line to the intersect of the Guadalupe County-Comal County-Bexar County intersect at the Cibolo creek.

THENCE south along the Guadalupe County-Bexar County line along the Cibolo creek to the intersect of the Guadalupe County-Bexar County-Wilson County line.

THENCE south along the Guadalupe County-Wilson County line along the Cibolo creek to the intersect and crossing of Guadalupe County Road 417.

THENCE east along Guadalupe County Road 417 to the intersect of Guadalupe County Road 417 and Guadalupe County Road 412.

THENCE northeast along Guadalupe County Road 412 to the intersect of Guadalupe County Road 412 and Guadalupe County Road 411 A.

THENCE east along Guadalupe County Road 411 A to the intersect of Guadalupe County Road 411 A and Farm-to-Market road number 725.

THENCE north along Farm-to-Market Road 725 to the intersect of Farm-to-Market Road 725 and Interstate Highway 10.

THENCE east along Interstate Highway 10 to the intersect of Interstate Highway 10 and State Highway 90.

THENCE east along State Highway 90 to the Guadalupe County-Caldwell County line at the San Marcos river.

THENCE northwest along the Guadalupe County-Caldwell County line along the San Marcos river to the place of beginning; and

(7) the part of Atascosa County beginning on the north line of the Robt. C. Rogers Survey, at the Bexar County-Atascosa County line, to its northwest corner, which is the northeast corner of the F. Brockinzen Survey, Abstract 86;

THENCE south along the east line of said Survey passing through its southeast corner and continuing south along the east line of the F. Brockinzen Survey, Abstract 90, to its southeast corner;

THENCE west along the south line of said survey to its southwest corner;

THENCE north along the west line of said F. Brockinzen Survey to the southeast corner of the B. Bonngartner Survey, Abstract 87;

THENCE west along the south line of said B. Bonngartner Survey passing through its southwest corner and continuing along the south line of the J. B. Goettlemann Survey, Abstract 309, to the Atascosa County-Medina County line;

THENCE north along the Atascosa County-Medina County line to the Bexar County line;

THENCE east along the Atascosa County-Bexar County Line to the place of beginning.

SECTION 1.05. FINDINGS RELATING TO BOUNDARIES. The legislature finds that the boundaries and field notes of the authority form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not affect the organization, existence, or validity of the district or the legality or operation of the district or its governing body.

SECTION 1.06. FINDING OF BENEFIT. (a) The legislature finds that the water in the unique underground system of water-bearing formations known as the Edwards-Balcones Fault Zone Aquifer has a hydrologic interrelationship to the Guadalupe, San Antonio, San Marcos, Comal, Frio, and Nueces river basins, is the primary source of water for the residents of the region, and is vital to the general economy and welfare of this state. The legislature finds that it is necessary, appropriate, and a benefit to the welfare of this state to provide for the management of the aquifer through the application of management mechanisms consistent with our legal system and appropriate to the aquifer system.

(b) The legislature further finds that the state will be benefitted by exercise of the powers of the authority and by the works and projects that

are to be accomplished by the authority under powers conferred by Article XVI, Section 59, of the Texas Constitution. The authority is created to serve a public use and benefit.

SECTION 1.07. OWNERSHIP OF UNDERGROUND WATER. The ownership and rights of the owner of the land and the owner's lessees and assigns, including holders of recorded liens or other security interests in the land, in underground water and the contract rights of any person who purchases water for the provision of potable water to the public or for the resale of potable water to the public for any use are recognized. However, action taken pursuant to this Act may not be construed as depriving or divesting the owner or the owner's lessees and assigns, including holders of recorded liens or other security interests in the land, of these ownership rights or as impairing the contract rights of any person who purchases water for the provision of potable water to the public or for the resale of potable water to the public for any use, subject to the rules adopted by the authority or a district exercising the powers provided by Chapter 52, Water Code. The legislature intends that just compensation be paid if implementation of this article causes a taking of private property or the impairment of a contract in contravention of the Texas or federal constitution.

SECTION 1.08. GENERAL POWERS. (a) The authority has all of the powers, rights, and privileges necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer. The authority has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 50, 51, and 52, Water Code, applicable to an authority created under Article XVI, Section 59, of the Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article regarding the area of the authority's jurisdiction.

(b) The authority's powers regarding underground water apply only to underground water within or withdrawn from the aquifer. This subsection is not intended to allow the authority to regulate surface water.

(c) The authority and local governments with pollution control powers provided under Subchapters D and E, Chapter 26, Water Code, in order to prevent pollution and enforce water quality standards in the counties included within the authority's boundaries and within a buffer zone that includes all of the area less than five miles outside of those counties, shall apply pollution control regulations equally and uniformly throughout the area within the counties and the buffer zone. The buffer zone does not include the territory within a water management district created under Chapter 654, Acts of the 71st Legislature, Regular Session, 1989.

SECTION 1.09. BOARD OF DIRECTORS. (a) The authority is governed by a board of nine directors.

(b) The board consists of:

(1) a member appointed by the South Central Texas Water Advisory Committee created by this Act;

(2) three residents of Bexar County, with two residents appointed by the governing body of the city of San Antonio and one resident

appointed by the Commissioners Court of Bexar County to represent cities and communities in the county other than the city of San Antonio;

(3) one resident of Comal County or the city of New Braunfels appointed by the Commissioners Court of Comal County;

(4) one resident of Hays County appointed by the governing body of the city of San Marcos;

(5) one resident of Medina County appointed by the governing body of the Medina Underground Water Conservation District;

(6) one resident of Uvalde County appointed by the governing body of the Uvalde Underground Water Conservation District; and

(7) one person appointed in rotation who is from Atascosa, Medina, or Uvalde counties, with that person appointed by the governing body of the Evergreen Underground Water District, by the Medina Underground Water Conservation District, or by the Uvalde County Underground Water Conservation District, with the person appointed by the Evergreen Underground Water District serving the first term, followed by a person appointed by the Medina Underground Water Conservation District to serve the second term, followed by a person appointed by the Uvalde County Underground Water Conservation District to serve the third term, and rotating in that order of appointment for subsequent terms.

(c) The Commissioners Court of Bexar County and the governing body of the city of San Antonio shall make appointments under Subsection (b) of this section that accurately reflect the ethnic composition of the population of Bexar County.

(d) The initial directors of the board shall draw lots to determine their terms. Four initial directors serve terms that expire June 1, 1995. Five initial directors serve terms that expire June 1, 1997. Subsequent directors shall be appointed to serve staggered four-year terms, the appropriate number of which expire June 1 of each odd-numbered year.

(e) At the initial meeting of the board, the members shall select one member to serve as presiding officer. The presiding officer serves a term set by rule of the board not to exceed four years. An act of the board is not valid unless adopted by the affirmative vote of a majority of the members of the board.

(f) A board member receives no compensation for service on the board but is entitled to reimbursement for actual and necessary expenses incurred in the performance of the member's duties.

(g) A board member shall hold office until a successor has been selected and approved and has qualified by taking the oath of office.

(h) If a vacancy on the board occurs, the governing body that appointed the vacating member shall appoint another person having the same qualifications required of the vacating member to serve the unexpired portion of the vacating member's term.

SECTION 1.10. SOUTH CENTRAL TEXAS WATER ADVISORY COMMITTEE. (a) The South Central Texas Water Advisory Committee shall advise the board on downstream water rights and issues. The advisory committee consists of one member appointed by the governing body of each of the following counties and municipalities, except that Atascosa and Guadalupe counties may not have a representative on the

advisory committee when the county has a representative member on the board:

(1) Atascosa;
(2) Caldwell;
(3) Calhoun;
(4) Comal;
(5) DeWitt;
(6) Goliad;
(7) Gonzales;
(8) Guadalupe;
(9) Hays;
(10) Karnes;
(11) Medina;
(12) Nueces;
(13) Refugio;
(14) San Patricio;
(15) Uvalde;
(16) Victoria;
(17) Wilson;
(18) the city of San Antonio;
(19) the city of Victoria; and
(20) the city of Corpus Christi.

(b) A member must be a resident or qualified voter of or engaged in business in a county all or part of which is included in the member's area of representation.

(c) The reimbursement of an advisory committee member for expenses is on the same terms as the reimbursement of board members. An advisory committee member is not entitled to compensation.

(d) An advisory committee member holds office until a successor is appointed.

(e) The authority shall send to each advisory committee member all the communications of the authority that are extended to board members and may participate in board meetings to represent downstream water supply concerns and assist in solutions to those concerns. Advisory committee members may not vote on a board decision.

(f) The advisory committee by resolution may request the board to reconsider any board action that is considered prejudicial to downstream water interests. If the board review does not result in a resolution satisfactory to the advisory committee, the advisory committee by resolution may request the commission to review the action. The commission shall review the action and may make a recommendation to the board. If the board determines that the board's action is contrary to an action of the commission affecting downstream interests, the board shall reverse itself.

(g) The advisory committee shall meet to organize and elect a presiding officer.

(h) The presiding officer of the advisory committee shall submit a report assessing the effectiveness of the authority to the commission and the authority by March 31 of each even-numbered year. The report must

assess the effect on downstream water rights of the management of the aquifer. The authority shall consider the report in managing the authority's affairs.

(i) The advisory committee's duties include:

(1) assisting the authority in developing the authority's demand management plan for the county that the representative represents;

(2) assisting the authority to implement the demand management plan; and

(3) performing other duties requested by the board that the representative may practicably perform.

SECTION 1.11. GENERAL POWERS AND DUTIES OF THE BOARD AND AUTHORITY. (a) The board shall adopt rules necessary to carry out the authority's powers and duties under this article, including rules governing procedures of the board and authority.

(b) The authority shall ensure compliance with permitting, metering, and reporting requirements and shall regulate permits.

(c) The authority may issue orders to enforce this article or its rules.

(d) The authority may:

(1) issue or administer grants, loans, or other financial assistance to water users for water conservation and water reuse;

(2) enter into contracts;

(3) sue and be sued in its own name;

(4) receive gifts, grants, awards, and loans for use in carrying out its powers and duties;

(5) hire an executive director to be the chief administrator of the authority and other employees as necessary to carry out its powers and duties;

(6) delegate the power to hire employees to the executive director of the authority;

(7) own real and personal property;

(8) close abandoned, wasteful, or dangerous wells;

(9) hold permits under state law or under federal law pertaining to the Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.) and its amendments;

(10) enforce Chapter 32, Water Code, and commission rules adopted under that Act within the authority's boundaries; and

(11) require to be furnished to the authority water well drillers' logs that are required by Chapter 32, Water Code, to be kept and furnished to the commission.

(e) The authority shall make a good faith effort to award to minority-owned and women-owned businesses contracts issued under the powers and duties granted under this section in the amount of 20 percent of the total amount of those contracts. Not later than October 31 of every even-numbered year, the authority shall file with the governor and each house of the legislature a written report containing the following information for the previous two years for all businesses, for minority-owned and women-owned businesses classified by minority group and within each minority group classification, by gender, the total number

of contracts issued by the authority; the total dollar amount of those contracts; and the total number of businesses submitting bids or proposals relating to such contracts and to the purpose of such contracts. In this subsection:

(1) "Minority-owned business" means a business entity at least 51 percent of which is owned by members of a minority group or, in the case of a corporation, at least 51 percent of the shares of which are owned by members of a minority group, and that is managed and controlled by members of a minority group in its daily operations;

(2) "Minority group" includes:

(A) African Americans

(B) American Indians

(C) Asian Americans; and

(D) Mexican Americans and other Americans of Hispanic origin; and

(3) "Women-owned business" means a business entity at least 51 percent of which is owned by women, or in the case of a corporation, at least 51 percent of the shares of which are owned by women, and that is managed and controlled by women in its daily operations.

(f) The authority may contract with a person who uses water from the aquifer for the authority or that person to construct, operate, own, finance, and maintain water supply facilities. Management fees or special fees may not be used for purchasing or operating these facilities. For the purpose of this subsection, "water supply facility" includes a dam, reservoir, treatment facility, transmission facility, or recharge project.

(g) The authority has the power of eminent domain. The authority may not acquire rights to underground water by the power of eminent domain.

(h) The authority is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 1.12. SUNSET COMMISSION REVIEW. (a) The board is subject to review under Chapter 325, Government Code (Texas Sunset Act), but may not be abolished under that Act. The review shall be conducted as if the board were scheduled to be abolished September 1, 2005.

(b) Unless members of the board are continued in office after the review, their membership expires September 1, 2005.

(c) When the membership of the board of directors expires under Subsection (b) of this section, a new board of directors shall be appointed as provided by this article, with each new member serving for the unexpired term of the member's predecessor. A member whose membership has expired under Subsection (b) is not eligible for reappointment under this subsection.

SECTION 1.13. REUSE AUTHORIZED. Any regulation of the withdrawal of water from the aquifer must allow for credit to be given for certified reuse of the water. For regulatory credit, the authority or a local underground water conservation district must certify:

(1) the lawful use and reuse of aquifer water;

(2) the amount of aquifer water to be used; and

(3) the amount of aquifer withdrawals replaced by reuse.

SECTION 1.14. WITHDRAWALS. (a) Authorizations to withdraw water from the aquifer and all authorizations and rights to make a withdrawal under this Act shall be limited in accordance with this section to:

(1) protect the water quality of the aquifer;

(2) protect the water quality of the surface streams to which the aquifer provides springflow;

(3) achieve water conservation;

(4) maximize the beneficial use of water available for withdrawal from the aquifer;

(5) protect aquatic and wildlife habitat;

(6) protect species that are designated as threatened or endangered under applicable federal or state law; and

(7) provide for instream uses, bays, and estuaries.

(b) Except as provided by Subsections (d), (f), and (h) of this section and Section 1.26 of this article, for the period ending December 31, 2007, the amount of permitted withdrawals from the aquifer may not exceed 450,000 acre-feet of water for each calendar year.

(c) Except as provided by Subsections (d), (f), and (h) of this section and Section 1.26 of this article, for the period beginning January 1, 2008, the amount of permitted withdrawals from the aquifer may not exceed 400,000 acre-feet of water for each calendar year.

(d) If, through studies and implementation of water management strategies, including conservation, springflow augmentation, diversions downstream of the springs, reuse, supplemental recharge, conjunctive management of surface and subsurface water, and drought management plans, the authority determines that additional supplies are available from the aquifer the authority, in consultation with appropriate state and federal agencies, may review and may increase the maximum amount of withdrawals provided by this section and set a different maximum amount of withdrawals.

(e) The authority may not allow withdrawals from the aquifer through wells drilled after June 1, 1993, except additional water as provided by Subsection (d) and then on an interruptible basis.

(f) If the level of the aquifer is equal to or greater than 650 feet above mean sea level as measured at Well J-17, the authority may authorize withdrawal from the San Antonio pool, on an uninterruptible basis, of permitted amounts. If the level of the aquifer is equal to or greater than 845 feet at Well J-27, the authority may authorize withdrawal from the Uvalde pool, on an uninterruptible basis, of permitted amounts. The authority shall limit the additional withdrawals to ensure that springflows are not affected during critical drought conditions.

(g) The authority by rule may define other pools within the aquifer, in accordance with hydrogeologic research, and may establish index wells for any pool to monitor the level of the aquifer to aid the regulation of withdrawals from the pools.

(h) To accomplish the purposes of this article, by June 1, 1994, the authority, through a program, shall implement and enforce water management practices, procedures, and methods to ensure that, not later than December 31, 2012, the continuous minimum springflows of the Comal Springs and the San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law. The authority from time to time as appropriate may revise the practices, procedures, and methods. To meet this requirement, the authority shall require:

(1) phased reductions in the amount of water that may be used or withdrawn by existing users or categories of other users; or

(2) implementation of alternative management practices, procedures, and methods.

SECTION 1.15. PERMIT REQUIRED. (a) The authority shall manage withdrawals from the aquifer and shall manage all withdrawal points from the aquifer as provided by this Act.

(b) Except as provided by Sections 1.17 and 1.33 of this article, a person may not withdraw water from the aquifer or begin construction of a well or other works designed for the withdrawal of water from the aquifer without obtaining a permit from the authority.

(c) The authority may issue regular permits, term permits, and emergency permits.

(d) Each permit must specify the maximum rate and total volume of water that the water user may withdraw in a calendar year.

SECTION 1.16. DECLARATIONS OF HISTORICAL USE; INITIAL REGULAR PERMITS. (a) An existing user may apply for an initial regular permit by filing a declaration of historical use of underground water withdrawn from the aquifer during the historical period from June 1, 1972, through May 31, 1993.

(b) An existing user's declaration of historical use must be filed on or before March 1, 1994, on a form prescribed by the board. An applicant for a permit must timely pay all application fees required by the board. An owner of a well used for irrigation must include additional documentation of the number of acres irrigated during the historical period provided by Subsection (a) of this section.

(c) An owner of a well from which the water will be used exclusively for domestic use or watering livestock and that is exempt under Section 1.33 of this article is not required to file a declaration of historical use.

(d) The board shall grant an initial regular permit to an existing user who:

(1) files a declaration and pays fees as required by this section; and

(2) establishes by convincing evidence beneficial use of underground water from the aquifer.

(e) To the extent water is available for permitting, the board shall issue the existing user a permit for withdrawal of an amount of water equal to the user's maximum beneficial use of water without waste during any one calendar year of the historical period. If a water user does not have historical use for a full year, then the authority shall issue a permit for

withdrawal based on an amount of water that would normally be beneficially used without waste for the intended purpose for a calendar year. If the total amount of water determined to have been beneficially used without waste under this subsection exceeds the amount of water available for permitting, the authority shall adjust the amount of water authorized for withdrawal under the permits proportionately to meet the amount available for permitting. An existing irrigation user shall receive a permit for not less than two acre-feet a year for each acre of land the user actually irrigated in any one calendar year during the historical period. An existing user who has operated a well for three or more years during the historical period shall receive a permit for at least the average amount of water withdrawn annually during the historical period.

(f) The board by rule shall consider the equitable treatment of a person whose historic use has been affected by a requirement of or participation in a federal program.

(g) The authority shall issue an initial regular permit without a term, and an initial regular permit remains in effect until the permit is abandoned, cancelled, or retired.

(h) The board shall notify each permit holder that the permit is subject to limitations as provided by this article.

SECTION 1.17. INTERIM AUTHORIZATION. (a) A person who, on the effective date of this article, owns a producing well that withdraws water from the aquifer may continue to withdraw and beneficially use water without waste until final action on permits by the authority, if:

(1) the well is in compliance with all statutes and rules relating to well construction, approval, location, spacing, and operation; and

(2) by March 1, 1994, the person files a declaration of historical use on a form as required by the authority.

(b) Use under interim authorization may not exceed on an annual basis the historical, maximum, beneficial use of water without waste during any one calendar year as evidenced by the person's declaration of historical use calculated in accordance with Section 1.16(e) of this article, unless that amount is otherwise determined by the authority.

(c) Use under this section is subject to the authority's comprehensive management plan and rules adopted by the authority.

(d) Interim authorization for a well under this section ends on:

(1) entry of a final and appealable order by the authority acting on the application for the well; or

(2) March 1, 1994, if the well owner has not filed a declaration of historical use.

SECTION 1.18. ADDITIONAL REGULAR PERMITS. (a) To the extent water is available for permitting after the issuance of permits to existing users, the authority may issue additional regular permits, subject to limits on the total amount of permitted withdrawals determined under Section 1.14 of this article.

(b) The authority may not consider or take action on an application relating to a proposed or existing well of which there is no evidence of actual beneficial use before June 1, 1993, until a final determination has

been made on all initial regular permit applications submitted on or before the initial application date of March 1, 1994.

SECTION 1.19. TERM PERMITS. (a) The authority may issue interruptible term permits for withdrawal for any period the authority considers feasible, but may not issue a term permit for a period of more than 10 years.

(b) A holder of a term permit may not withdraw water from the San Antonio pool of the aquifer unless the level of the aquifer is higher than 665 feet above sea level, as measured at Well J-17.

(c) A holder of a term permit may not withdraw water from the Uvalde pool of the aquifer unless the level of the aquifer is higher than 865 feet above sea level, as measured at Well J-27.

SECTION 1.20. EMERGENCY PERMITS. (a) Emergency permits may be issued only to prevent the loss of life or to prevent severe, imminent threats to the public health or safety.

(b) The term of an emergency permit may not exceed 30 days, unless renewed.

(c) The board may renew an emergency permit.

(d) The holder of an emergency permit may withdraw water from the aquifer without regard to its effect on other permit holders.

SECTION 1.21. PERMIT RETIREMENT. (a) The authority shall prepare and implement a plan for reducing, by January 1, 2008, the maximum annual volume of water authorized to be withdrawn from the aquifer under regular permits to 400,000 acre-feet a year or the adjusted amount determined under Subsection (d) of Section 1.14 of this article.

(b) The plan must be enforceable and must include water conservation and reuse measures, measures to retire water rights, and other water management measures designed to achieve the reduction levels or appropriate management of the resource.

(c) If, on or after January 1, 2008, the overall volume of water authorized to be withdrawn from the aquifer under regular permits is greater than 400,000 acre-feet a year or greater than the adjusted amount determined under Subsection (d) of Section 1.14 of this article, the maximum authorized withdrawal of each regular permit shall be immediately reduced by an equal percentage as is necessary to reduce overall maximum demand to 400,000 acre-feet a year or the adjusted amount, as appropriate. The amount reduced may be restored, in whole or in part, as other appropriate measures are implemented that maintain overall demand at or below the appropriate amount.

SECTION 1.22. ACQUISITION OF RIGHTS. (a) The authority may acquire permitted rights to use water from the aquifer for the purposes of:

(1) holding those rights in trust for sale or transfer of the water or the rights to persons within the authority's jurisdiction who may use water from the aquifer;

(2) holding those rights in trust as a means of managing overall demand on the aquifer;

(3) holding those rights for resale or retirement as a means of complying with pumping reduction requirements under this article; or

(4) retiring those rights, including those rights already permitted.

(b) The authority may acquire and hold permits or rights to appropriate surface water or groundwater from sources inside or outside of the authority's boundaries.

(c) Notwithstanding any other provisions of law, the authority's acquisition of permitted rights to use water from the aquifer is eligible for financial assistance from:

(1) the water supply account of the Texas Water Development Fund under Subchapter D, Chapter 17, Water Code;

(2) the water loan assistance fund under Subchapter C, Chapter 15, Water Code; and

(3) the revenue bond program under Subchapter I, Chapter 17, Water Code.

SECTION 1.23. CONSERVATION AND REUSE PLANS. (a) The authority may require holders of regular permits and holders of term permits to submit water conservation plans and, if appropriate, reuse plans for review and approval by the authority. The board by rule shall require a plan to be implemented after a reasonable time after a plan's approval.

(b) The board shall assist users in developing conservation or reuse plans.

(c) The authority biennially shall prepare and update enforceable and effective conservation and reuse plans as required by this article. Not later than January 1 of each odd-numbered year the authority shall submit the plan to the legislature.

SECTION 1.24. LOANS AND GRANTS. (a) Notwithstanding any other provision of law, the authority is eligible as a lender district to receive loans from the Texas Water Development Board under the agricultural water conservation bond program under Subchapter J, Chapter 17, Water Code.

(b) The authority may apply for, request, solicit, contract for, receive, and accept gifts, grants, and other assistance from any source for the purposes of this article.

(c) The authority may issue grants or make loans to finance the purchase or installation of equipment or facilities. If the authority issues a grant for a water conservation, reuse, or water management project, the authority may require the beneficiary to transfer to the authority permitted rights to aquifer water equal to a portion of the water conserved or made available by the project.

SECTION 1.25. COMPREHENSIVE MANAGEMENT PLAN. (a) Consistent with Section 1.14 of this article, the authority shall develop, by September 1, 1995, and implement a comprehensive water management plan that includes conservation, future supply, and demand management plans. The authority may not delegate the development of the plan under Section 1.42 of this article.

(b) The authority, in conjunction with the South Central Texas Water Advisory Committee, the Texas Water Development Board, and underground water conservation districts within the authority's boundaries, shall develop a 20-year plan for providing alternative supplies of water to the region, with five-year goals and objectives, to be implemented by the

authority and reviewed annually by the appropriate state agencies and the Edwards Aquifer Legislative Oversight Committee. The authority, advisory committee, Texas Water Development Board, and districts, in developing the plan, shall:

(1) thoroughly investigate all alternative technologies;

(2) investigate mechanisms for providing financial assistance for alternative supplies through the Texas Water Development Board; and

(3) perform a cost-benefit analysis and an environmental analysis.

SECTION 1.26. CRITICAL PERIOD MANAGEMENT PLAN. The authority shall prepare and coordinate implementation of a plan for critical period management on or before September 1, 1995. The mechanisms must:

(1) distinguish between discretionary use and nondiscretionary use;

(2) require reductions of all discretionary use to the maximum extent feasible;

(3) require utility pricing, to the maximum extent feasible, to limit discretionary use by the customers of water utilities; and

(4) require reduction of nondiscretionary use by permitted or contractual users, to the extent further reductions are necessary, in the reverse order of the following water use preferences:

(A) municipal, domestic, and livestock;

(B) industrial and crop irrigation;

(C) residential landscape irrigation;

(D) recreational and pleasure; and

(E) other uses that are authorized by law.

SECTION 1.27. RESEARCH. (a) The authority shall complete research on the technological feasibility of springflow enhancement and yield enhancement that, immediately before September 1, 1993, is being conducted by the Edwards Underground Water District.

(b) The authority may conduct research to:

(1) augment the springflow, enhance the recharge, and enhance the yield of the aquifer;

(2) monitor and protect water quality;

(3) manage water resources, including water conservation, water use and reuse, and drought management measures; and

(4) develop alternative supplies of water for users.

(c) The authority may schedule demonstration projects for purposes of Subsection (b)(1) of this section.

(d) The authority may contract with other persons to conduct research.

SECTION 1.28. TAX; BONDS. (a) The authority may not levy a property tax.

(b) The authority may issue revenue bonds to finance the purchase of land or the purchase, construction, or installation of facilities or equipment. The authority may not allow for any person to construct, acquire, or own facilities for transporting groundwater out of Uvalde County or Medina County.

(c) Bonds issued by the authority are subject to review and approval of the attorney general and the commission. If the attorney general finds that the bonds have been authorized in accordance with the law, the

attorney general shall approve them, and the comptroller of public accounts shall register the bonds. Following approval and registration, the bonds are incontestable and are binding obligations according to their terms.

(d) The authority board may organize proceeds of the bonds into funds and accounts and may invest the proceeds as the authority board determines is appropriate.

SECTION 1.29. FEES. (a) The cost of reducing withdrawals or permit retirements must be borne:

(1) solely by users of the aquifer for reducing withdrawals from the level on the effective date of this article to 450,000 acre-feet a year, or the adjusted amount determined under Subsection (d) of Section 1.14 of this article for the period ending December 31, 2007; and

(2) equally by aquifer users and downstream water rights holders for permit retirements from 450,000 acre-feet a year, or the adjusted amount determined under Subsection (d) of Section 1.14 of this article for the period ending December 31, 2007, to 400,000 acre-feet a year, or the adjusted amount determined under Subsection (d) of Section 1.14 of this article, for the period beginning January 1, 2008.

(b) The authority shall assess equitable aquifer management fees based on aquifer use under the water management plan to finance its administrative expenses and programs authorized under this article. Each water district governed by Chapter 52, Water Code, that is within the authority's boundaries may contract with the authority to pay expenses of the authority through taxes in lieu of user fees to be paid by water users in the district. The contract must provide that the district will pay an amount equal to the amount that the water users in the district would have paid through user fees. The authority may not collect a total amount of fees and taxes that is more than is reasonably necessary for the administration of the authority.

(c) The authority shall also assess an equitable special fee based on permitted aquifer water rights to be used only to finance the retirement of rights necessary to meet the goals provided by Section 1.21 of this article. The authority shall set the equitable special fees on permitted aquifer users at a level sufficient to match the funds raised from the assessment of equitable special fees on downstream water rights holders.

(d) The commission shall assess equitable special fees on all downstream water rights holders in the Guadalupe River Basin to be used solely to finance the retirement of aquifer rights necessary to meet the goals provided by Section 1.21 of this article. Fees assessed under this subsection may not exceed one-half of the cost of permit retirements from 450,000 acre-feet a year, or the adjusted amount determined under Subsection (d) of Section 1.14 of this article, for the period ending December 31, 2007, to 400,000 acre-feet a year for the period beginning January 1, 2008. The authority shall report to the commission the estimated costs of the retirements. The amount of fees assessed under this subsection shall be determined in accordance with rules adopted by the commission for fees under the South Texas watermaster program with adjustments as necessary to ensure that fees are equitable between users, including priority and nonpriority hydroelectric users. A downstream water

rights holder shall pay fees assessed under this subsection to the authority. A fee may not be assessed by the commission under this subsection on contractual deliveries of water stored in Canyon Lake that may be diverted downstream of the San Marcos Springs or Canyon Dam. A person or entity making a contractual sale of water stored upstream of Canyon Dam may not establish a systemwide rate that requires purchasers of upstream-stored water to pay the special fee assessed under this subsection.

(e) In developing an equitable fee structure under this section, the authority may establish different fee rates on a per acre-foot basis for different types of use. The fees must be equitable between types of uses. The fee rate for agricultural use shall be based on the volume of water withdrawn and may not be more than 20 percent of the fee rate for municipal use. The authority shall assess the fees on the amount of water a permit holder is authorized to withdraw under the permit.

(f) The authority shall impose a permit application fee not to exceed $25.

(g) The authority may impose a registration application fee not to exceed $10.

(h) Special fees collected under Subsection (c) or (d) of this section may not be used to finance a surface water supply reservoir project.

(i) The authority shall provide money as necessary, but not to exceed five percent of the money collected under Subsection (d) of this section, to finance the South Central Texas Water Council's administrative expenses and programs authorized under this article.

SECTION 1.30. RIVER DIVERSIONS. (a) The commission may issue to an applicant a special permit to divert water from the Guadalupe River from a diversion point on the river downstream of the point where the river emerges as a spring.

(b) A permit issued to a person under this section must condition the diversion of water from the Guadalupe River on a limitation of withdrawals under the person's permit to withdraw water from the aquifer.

(c) A permit issued under this section must provide that the permit holder may divert water from the Guadalupe River only if:

(1) the diversion is made instead of a withdrawal from the aquifer to enhance the yield of the aquifer; and

(2) the diversion does not impair senior water rights or vested riparian rights.

(d) A permit issued in accordance with this section is subordinate to permitted water rights for which applications were submitted before May 31, 1993, and vested riparian rights.

(e) Sections 11.028 and 11.033, Water Code, do not apply to a permit issued under this section.

SECTION 1.31. MEASURING DEVICES. (a) The owner of a nonexempt well that withdraws water from the aquifer shall install and maintain a measuring device approved by the authority designed to indicate the flow rate and cumulative amount of water withdrawn by that well. This requirement may be waived by the authority on written request by a well owner to use an alternative method of determining the amount of water withdrawn.

(b) The authority is responsible for the costs of purchasing, installing, and maintaining measuring devices, if required, for an irrigation well in existence on September 1, 1993.

SECTION 1.32. REPORTS. Not later than March 1 of each year, and on a form prescribed by the authority, each holder of a permit shall file with the authority a written report of water use for the preceding calendar year.

SECTION 1.33. WELL METERING EXEMPTION. (a) A well that produces 25,000 gallons of water a day or less for domestic or livestock use is exempt from metering requirements.

(b) Exempt wells must register with the authority or with an underground water conservation district in which the well is located.

(c) A well within or serving a subdivision requiring platting does not qualify for an exempt use.

SECTION 1.34. TRANSFER OF RIGHTS. (a) Water withdrawn from the aquifer must be used within the boundaries of the authority.

(b) The authority by rule may establish a procedure by which a person who installs water conservation equipment may sell the water conserved.

(c) A permit holder may lease permitted water rights, but a holder of a permit for irrigation use may not lease more than 50 percent of the irrigation rights initially permitted. The user's remaining irrigation water rights must be used in accordance with the original permit and must pass with transfer of the irrigated land.

SECTION 1.35. PROHIBITIONS. (a) A person may not withdraw water from the aquifer except as authorized by a permit issued by the authority or by this article.

(b) A person holding a permit issued by the authority may not violate the terms or conditions of the permit.

(c) A person may not waste water withdrawn from the aquifer.

(d) A person may not pollute or contribute to the pollution of the aquifer.

(e) A person may not violate this article or a rule of the authority adopted under this article.

SECTION 1.36. ENFORCEMENT. (a) The authority may enter orders to enforce the terms and conditions of permits, orders, or rules issued or adopted under this article.

(b) The authority by rule shall provide for the suspension of a permit of any class for a failure to pay a required fee or a violation of a permit condition or order of the authority or a rule adopted by the authority.

SECTION 1.37. ADMINISTRATIVE PENALTY. (a) The authority may assess an administrative penalty against a person who violates this article or a rule adopted or order issued under this article in an amount of not less than $100 or more than $1,000 for each violation and for each day of a continuing violation.

(b) In determining the amount of the penalty, the authority shall consider:

(1) the history of previous violations;

(2) the amount necessary to deter future violations;

(3) efforts to correct the violation;

(4) enforcement costs relating to the violation; and

(5) any other matters that justice may require.

(c) If after an examination of the facts the authority concludes that the person did commit a violation, the authority may issue a preliminary report stating the facts on which it based its conclusion, recommending that an administrative penalty under this section be imposed, and recommending the amount of the proposed penalty.

(d) The authority shall give written notice of the report to the person charged with committing the violation. The notice must include a brief summary of the facts, a statement of the amount of the recommended penalty, and a statement of the person's right to an informal review of the occurrence of the violation, the amount of the penalty, or both.

(e) Not later than the 10th day after the date on which the person charged with committing the violation receives the notice, the person may either give the authority written consent to the report, including the recommended penalty, or make a written request for an informal review by the authority.

(f) If the person charged with committing the violation consents to the penalty recommended by the authority or fails timely to request an informal review, the authority shall assess the penalty. The authority shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(g) If the person charged with committing a violation requests an informal review as provided by Subsection (e) of this section, the authority shall conduct the review. The authority shall give the person written notice of the results of the review.

(h) Not later than the 10th day after the date on which the person charged with committing the violation receives the notice prescribed by Subsection (g) of this section, the person may make to the authority a written request for a hearing.

(i) If, after informal review, a person who has been ordered to pay a penalty fails to request a formal hearing in a timely manner, the authority shall assess the penalty. The authority shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(j) Within 30 days after the date the authority's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the authority's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the authority by certified mail.

(l) If the authority receives a copy of an affidavit under Subsection (k)(2) of this section, it may file, with the court within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the authority may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the authority:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes); and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the authority.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 1.38. INJUNCTION BY AUTHORITY. The authority may file a civil suit in a state district court for an injunction to enforce this article. The authority may recover reasonable attorney's fees in a suit under this section.

SECTION 1.39. SUIT FOR MANDAMUS. The commission may file a civil suit for an order of mandamus against the authority to compel the authority to perform its duties under this article or to compel the authority to enforce this article against a violator. The commission may recover attorney fees from the authority in a suit under this section.

SECTION 1.40. CIVIL PENALTY. (a) The commission or authority may file a civil action in state district court for a civil penalty for a violation of this article or a rule adopted or permit or order issued under this article.

(b) The commission or authority may recover a civil penalty of not less than $100 or more than $10,000 for each violation and for each day of violation and attorney fees.

(c) A civil penalty or attorney fees collected by the authority under this section shall be paid to the authority.

(d) A civil penalty or attorney fees collected by the commission under this section shall be deposited to the credit of the general revenue fund.

SECTION 1.41. REPEALER; TRANSFERS; RULES. (a) Chapter 99, Acts of the 56th Legislature, Regular Session, 1959 (Article 8280-219, Vernon's Texas Civil Statutes), is repealed, and the Edwards Underground Water District is abolished.

(b) All files and records of the Edwards Underground Water District pertaining to control, management, and operation of the district are transferred from the Edwards Underground Water District to the authority on the effective date of this article.

(c) All real and personal property, leases, rights, contracts, staff, and obligations of the Edwards Underground Water District are transferred to the authority on the effective date of this article.

(d) On September 1, 1993, all unobligated and unexpended funds of the Edwards Underground Water District shall be transferred to the authority.

(e) A rule adopted by the Edwards Underground Water District before the effective date of this article that relates to management or control of the aquifer is, on the effective date of this article, a rule of the authority and remains in effect until amended or repealed by the authority.

(f) The authority shall be automatically substituted for the Edwards Underground Water District in any judicial or administrative proceeding to which, on the effective date of this article, the Edwards Underground Water District is a party.

SECTION 1.42. EFFECT ON OTHER DISTRICTS. (a) An underground water conservation district other than the authority may manage and control water that is a part of the aquifer after the effective date of this article only as provided in this section. This article does not

affect a water reclamation or conservation district that manages and controls only water from a resource other than the aquifer.

(b) An underground water conservation district other than the authority may manage and control water that is a part of the aquifer to the extent that those management activities do not conflict with and are not duplicative of this article or the rules and orders of the authority.

(c) Except as otherwise provided by this article, the board may delegate the powers and duties granted to it under this article. The board shall delegate all or part of its powers or duties to an underground water conservation district on the district's request if the district demonstrates to the satisfaction of the board that:

(1) the district has statutory powers necessary for full enforcement of the rules and orders to be delegated;

(2) the district has implemented all rules and policies necessary to fully implement the programs to be delegated; and

(3) the district has implemented a system designed to provide the authority with adequate information with which to monitor the adequacy of the district's performance in enforcing board rules and orders.

(d) In making the determination under Subsection (c) of this section, the board may consider the district's past performance and experience in enforcing powers and duties delegated to it by the board. The board may deny a request for delegation of powers or duties by a district if the district has previously had a delegation terminated under Subsection (e) of this section.

(e) If the authority determines that a district has failed adequately to enforce or implement any rules or orders delegated under this section, the authority immediately shall provide to the district notice that sets forth the reasons for its determination and the actions that the district must take to retain the delegated authority. Not later than the 10th day after the date the notice is given, the district must demonstrate its commitment and ability to take the actions set forth in the notice. If, at the end of the 10-day period, the authority does not find that the district will adequately enforce its rules and orders, the authority immediately shall resume full responsibility for implementation and enforcement of those rules and orders. The authority shall provide to the district notice that the delegation of authority to it has been terminated. After the termination notice is given, the authority of the district to manage or control water in the aquifer is limited to the authority granted by Subsection (b) of this section.

SECTION 1.43. CREATION OF UNDERGROUND WATER CONSERVATION DISTRICT. An underground water conservation district may be created in any county affected by this article as provided by Subchapter B, Chapter 52, Water Code.

SECTION 1.44. COOPERATIVE CONTRACTS FOR ARTIFICIAL RECHARGE. (a) The authority may contract with any political subdivision of the state under Chapter 791, Government Code, to provide for artificial recharge of the aquifer, through injection wells or with surface water subject to the control of the political subdivision, for the subsequent retrieval of the water by the political subdivision or its authorized assignees for beneficial use within the authority.

(b) The authority may not unreasonably deny a request to enter into a cooperative contract under this section if the political subdivision agrees to:

(1) file with the authority records of the injection or artificial recharge of the aquifer; and

(2) provide for protection of the quality of the aquifer water and of the rights of aquifer users in designating the location of injection wells or recharge dams, the methods of injection or recharge, and the location and type of retrieval wells.

(c) The political subdivision causing artificial recharge of the aquifer is entitled to withdraw during any 12-month period the measured amount of water actually injected or artificially recharged during the preceding 12-month period, as demonstrated and established by expert testimony, less an amount determined by the authority to:

(1) account for that part of the artificially recharged water discharged through springs; and

(2) compensate the authority in lieu of users' fees.

(d) The amounts of water withdrawn under this section are not subject to the maximum total permitted withdrawals provided by Section 1.14 of this article.

SECTION 1.45. RECHARGE DAMS. (a) The authority may build or operate recharge dams in the recharge area of the aquifer if the recharge is made to increase the yield of the aquifer and the recharge project does not impair senior water rights or vested riparian rights.

(b) The commission shall determine the historic yield of the floodwater to the Nueces River basin. The historic yield is equal to the lesser of:

(1) the average annual yield for the period from 1950 to 1987; or

(2) the annual yield for 1987.

(c) Only the amount of floodwater in excess of the historic yield as determined by the commission may be impounded by a recharge dam built or operated under this section.

ARTICLE 2

SECTION 2.01. DEFINITION. In this article, "district" means the Uvalde County Underground Water Conservation District.

SECTION 2.02. VALIDATION. The creation of the district and all resolutions, orders, and other acts or attempted acts of the board of directors of the district are validated in all respects. The creation of the district and all resolutions, orders, and other acts or attempted acts of the board of directors of the district are valid as though they originally had been legally authorized or accomplished.

SECTION 2.03. BOUNDARIES. Pursuant to the petition to the Commissioners Court of Uvalde County, Texas, requesting the creation of the district, the district includes the territory contained within the boundaries of Uvalde County.

SECTION 2.04. FINDING OF BENEFIT. All the land and other property included within the boundaries of the district will be benefitted by the validation of the district.

SECTION 2.05. POWERS. (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapters 50 and 52, Water Code, applicable to underground water conservation districts created under Article XVI, Section 59, of the Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article.

(b) The district may develop and implement a drought response plan, with reasonable rules, using water levels as observed in the Uvalde Index Well YP-69-50-302.

(c) The rights, powers, privileges, authority, functions, and duties of the district are subject to the continuing right of supervision of the state to be exercised by and through the Texas Water Commission.

SECTION 2.06. LEVY OF TAXES. The levy and collection of taxes by the district is governed by Subchapter H, Chapter 52, Water Code, except that the district may not levy a maintenance and operating tax at a rate that exceeds two cents per $100 assessed valuation unless an election held in the district authorizes a higher rate.

SECTION 2.07. PENDING LITIGATION. This article does not apply to or affect litigation pending on the effective date of this article in any court of competent jurisdiction in this state to which the district is a party.

ARTICLE 3

SECTION 3.01. LEGISLATIVE OVERSIGHT. (a) The Edwards Aquifer Legislative Oversight Committee is composed of:

(1) three members of the senate appointed by the lieutenant governor; and

(2) three members of the house of representatives appointed by the speaker of the house of representatives.

(b) The committee shall examine and report to the legislature on the effectiveness of the state and local governmental entities in meeting the purposes of the Edwards Aquifer Authority.

(c) The board shall continually oversee and review:

(1) the activities of the Edwards Aquifer Authority and the implementation of that authority's enabling legislation;

(2) the activities of the South Central Texas Water Advisory Committee;

(3) compliance with federal law relating to threatened or endangered species related to management of underground or surface water in the Edwards Aquifer region;

(4) water pollution control activities in the Edwards Aquifer region; and

(5) the activities of soil and water conservation districts and river authorities in the Edwards Aquifer district that affect the management of the aquifer.

SECTION 3.02. NOTICE OF AVAILABLE WATER. The Texas Natural Resource Conservation Commission shall notify the Edwards Aquifer Authority of any water available for appropriation in the Guadalupe-Blanco River Basin as the commission discovers the available water.

SECTION 3.03. SUNSET COMMISSION REVIEW OF GUADALUPE-BLANCO RIVER AUTHORITY. (a) The board of directors of the Guadalupe-Blanco River Authority is subject to review under Chapter 325, Government Code (Texas Sunset Act), but may not be abolished under that Act. The review shall be conducted as if the board of directors were scheduled to be abolished September 1, 1995.

(b) Unless after the review the legislature continues the members of the board of directors in office, the terms of the board members expire September 1, 1995.

(c) If the terms of the board of directors expire under Subsection (b) of this section, a new board of directors shall be appointed and confirmed as provided by Chapter 75, Acts of the 43rd Legislature, 1st Called Session, 1933, with three members appointed to terms expiring February 1, 1997, three to terms expiring February 1, 1999, and three to terms expiring February 1, 2001. A member whose term expires under Subsection (b) is not eligible for reappointment under this subsection.

SECTION 3.04. COOPERATION. All state and local governmental entities are hereby directed to cooperate with the authority to the maximum extent practicable so that the authority can best be able to accomplish the purposes set forth under Article 3. The authority shall, on or before January 1, 1995, submit a report to the governor, lieutenant governor, and speaker of the house, evaluating the extent to which other entities have cooperated and assisted the authority.

ARTICLE 4

SECTION 4.01. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS. (a) The proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and other laws of this state, including the governor, who has submitted the notice and Act to the Texas Water Commission.

(b) The Texas Water Commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(c) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 4.02. EFFECTIVE DATES. This Act takes effect September 1, 1993, except Section 1.35 of Article 1 takes effect March 1, 1994.

SECTION 4.03. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 903

Senator Carriker submitted the following Conference Committee Report:

Austin, Texas
May 28, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 903** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

CARRIKER	SEIDLITS
HARRIS OF DALLAS	MARCHANT
BARRIENTOS	S. TURNER
ROSSON	ECKELS
ELLIS	
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 959

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 959** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ELLIS	JUNELL
RATLIFF	T. HUNTER

BIVINS	DELISI
MONCRIEF	WILSON
MONTFORD	COLEMAN
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to state energy efficiency and conservation programs; granting the authority to issue revenue bonds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivisions (3), (4), (5), and (6), Section 2, Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), are amended to read as follows:

(3) "Competitive grant program" means a program through which the Legislative Budget Board [~~office of the governor~~] finances projects under this Act that have been approved from a group of competing proposals submitted by public or private applicants.

(4) "Direct grant program" means a program through which the Legislative Budget Board [~~office of the governor~~] finances projects under this Act that have been approved as components of a proposal recommended by the supervising agency of that program.

(5) "Energy office" means the energy office of the General Services Commission [~~office of the governor~~].

(6) "Supervising agency" means the state agency, department, commission, or other entity designated by this Act or by the Legislative Budget Board [~~office of the governor~~] to supervise, manage, or administer the implementation of a program financed under this Act.

SECTION 2. Sections 3 and 4, Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 3. OIL OVERCHARGE ADMINISTRATION. (a) The power and discretion to finance projects under, and oversee and monitor the administration of, the competitive and direct grant programs prescribed by this Act are assigned to the Legislative Budget Board [~~office of the governor, subject to the requirements of Section 5 of this Act~~]. The board may finance projects under this Act only with the approval of the governor.

(b) The Legislative Budget Board [~~office of the governor~~] shall determine the supervising agency for each [~~competitive grant program and for each~~] direct grant program established by the board [~~office~~]. The board [~~office of the governor~~] may:

(1) establish direct grant programs [~~and competitive grant programs~~] in addition to those provided by this Act; and

(2) establish criteria for eligibility and evaluation of proposals submitted under direct grant programs [~~or competitive grant programs~~], which criteria may apply to one or more specific programs or to all programs.

(c) The Legislative Budget Board [~~office of the governor~~] shall establish programs and criteria and evaluate proposals in accordance with

applicable federal guidelines. The board [~~office of the governor~~] is responsible for the transmission to the appropriate federal entity of all information required under applicable federal guidelines regarding programs and proposals subject to this Act.

Sec. 4. STAFF; AGENCY AND PRIVATE ASSISTANCE. (a) The section of the Legislative Budget Board office that provides federal funds analysis [~~energy office~~] shall provide staff to implement and administer this Act.

(b) In addition to the section of the Legislative Budget Board office that provides federal funds analysis [~~energy office~~], the Legislative Budget Board [~~office of the governor~~] may enlist the assistance of any state agency, department, commission, or other entity or any private entity in the evaluation or review of proposals, the audit of program participants or supervising agencies, the performance of administrative duties under this Act, or the development of eligibility or evaluation criteria.

SECTION 3. Subsections (b) and (e), Section 6, Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), are amended to read as follows:

(b) Money in the account shall be appropriated by the legislature to the Legislative Budget Board [~~governor~~] for use by the board, subject to the approval [~~office~~] of the governor, in the implementation and operation of programs authorized by this Act. The board may reallocate amounts appropriated for direct grant programs among any programs approved by the United States Department of Energy. Money in the account also may be appropriated to provide initial financing for the Texas energy efficiency and conservation program established under Article 16, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

(e) The Legislative Budget Board [~~office of the governor~~] shall determine the persons whose signatures are authorized to be affixed to vouchers submitted to the comptroller for approval of payments from the account. The Legislative Budget Board [~~office of the governor~~] shall give the comptroller notice of each determination made under this subsection. The comptroller shall approve payments from the account in the manner provided for approval of payments from other amounts appropriated by the legislature.

SECTION 4. Subsection (b), Section 7, Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The supervising agency of a direct grant program financed under this Act may adopt rules for implementation of the program, including rules providing eligibility criteria, that are not inconsistent with criteria established by applicable federal guidelines, criteria prescribed by this Act, or criteria adopted by the Legislative Budget Board [~~office of the governor~~].

SECTION 5. Subsection (a), Section 8, Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Texas Department of Housing and Community Affairs [~~Human Services~~] is the supervising agency for the direct grant program known as

the emergency nutrition and temporary emergency relief program, established by Chapter 34, Human Resources Code. With direct grant money under this Act, the department, under the program, shall provide money for payment to vendors of energy utility services for the purpose of preventing the interruption or termination of energy utility service or restoring that service to low-income persons. The department shall allocate money provided under this Act for the program for distribution within counties on the basis of unemployment and poverty statistics for residents of individual counties.

SECTION 6. Subsection (a), Section 10, Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Texas Department of Housing and Community Affairs [~~Human Services~~] is the supervising agency for the direct grant program known as the low-income home energy assistance program, established in accordance with the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. Section 8621 et seq.). With direct grant money under this Act, the department, under the program, shall make payments directly to eligible low-income households, or on behalf of such households to energy suppliers, to assist the recipients in meeting the costs of home energy.

SECTION 7. Section 12, Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. NATIVE AMERICAN RESTITUTIONARY PROGRAM. The Texas Department of Housing and Community Affairs [~~Indian Commission~~] is the supervising agency for a direct grant program to be known as the Native American restitutionary program. Under the program, the department [~~commission~~] shall distribute money granted under this Act in accordance with the applicable federal guidelines for the purpose of providing energy-related assistance to Native Americans of this state.

SECTION 8. Subsection (a), Section 17, Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The energy office [~~of the governor~~] shall award one or more competitive grants to support regulatory intervention activities to promote the adoption and expansion by energy utilities of consumer-oriented energy conservation programs.

SECTION 9. Subsection (a), Section 18, Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A competitive grant program to be known as the public-private partnership program is established. Recipients of grant money under the program may include but are not limited to community foundations affiliated with the Communities Foundation, Inc., of Texas. The Texas Department of Housing and Community Affairs shall distribute competitive grant money provided under this Act for [~~office of the governor may approve and finance~~] one or more energy-related demonstration projects under this program as well as more broadly aimed energy-related projects. Recipients of grant money under the program may be required to provide

in the aggregate from private sources for projects financed under this program amounts at least equal to the total amount of grants awarded by the department [~~office of the governor~~] under the program during a particular fiscal period.

SECTION 10. Subsection (a), Section 19, Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A competitive grant program to be known as the housing partnership program is established. With competitive grant money provided under this Act, the Texas Department of Housing and Community Affairs [~~supervising agency~~] shall distribute money for residential energy conservation projects which reduce the amount of energy consumed for space heating, space cooling, water heating, refrigeration, or other residential energy uses. Projects may include demonstration of commercially available cost-effective energy saving techniques and technologies, training and technical assistance in energy efficient construction/remodeling, information transfer to occupants, or financing incentives for energy saving design or improvements. Eligible applicants may include local governments, public housing agencies, or other public or nonprofit organizations serving the housing needs of low and moderate income individuals. Recipients of the grant money under this program may be required to provide from other sources for projects financed under this program amounts at least equal to the total amount of grants awarded by the department [~~supervising agency~~] under the program.

SECTION 11. Sections 21, 22, 23, 24, 25, and 26, Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 21. AGRICULTURAL ENERGY CONSERVATION PROGRAM. A direct [~~competitive~~] grant program to be known as the agricultural energy conservation program is established. With direct [~~competitive~~] grant money under this program, the Texas Natural Resource Conservation Commission [~~supervising agency~~] shall distribute money for energy projects designed to benefit agriculture in accordance with applicable federal guidelines, including projects concerning agricultural demonstration projects, energy audits of agricultural and food processing facilities, and agricultural information and technical assistance. [~~The office of the governor may finance a selected proposal without requiring any matching amounts, or the office may require that the recipient match any grant received under the program.~~]

Sec. 22. ALTERNATIVE ENERGY PROGRAM. A competitive grant program to be known as the alternative energy program is established. With competitive grant money provided under this Act, the energy office [~~supervising agency~~] shall distribute money for demonstration projects developing alternative energy resources, which may include photovoltaics, biomass, wind, and solar applications and other appropriate applications of alternative energy. The Legislative Budget Board [~~office of the governor~~] may require grant recipients under this program to match the grants in ratios determined by the board [~~office~~].

Sec. 23. ENERGY RESEARCH AND DEVELOPMENT PROGRAM. The Legislative Budget Board [~~office of the governor~~] may finance projects under a direct [~~competitive~~] grant program to be known as the energy research and development program that supplement or initiate research by public or private institutions on energy-related issues. The board [~~office of the governor~~] may require recipients to match grants awarded under this program in ratios determined by the board [~~office~~].

Sec. 24. LOCAL GOVERNMENT ENERGY PROGRAM. [~~(a)~~] A direct [~~competitive~~] grant program to be known as the local government energy program is established. Under the program, the supervising agency shall distribute [~~competitive~~] grant money provided under this Act for energy-saving projects that benefit local governments in this state.

[~~(b) Proposals under this section may include energy audits of local government facilities, traffic light synchronization, fleet management, and fuel-efficient transit routing. The office of the governor may require grant recipients under this program to match the grants in ratios determined by the office.~~]

Sec. 25. TRANSPORTATION ENERGY PROGRAM. (a) A direct [~~competitive~~] grant program to be known as the transportation energy program is established. Under this program, the supervising agency shall distribute [~~competitive~~] grant money provided under this Act for projects concerning mass transit and other transportation services. The projects may assist service providers in providing services such as traffic light synchronization, fleet management, energy-efficient computerized transit routing, car-care clinics, vanpooling or ridesharing efforts, transportation of public schoolchildren, transportation of inmates of local correctional facilities [~~public education related to mass transit~~], driver energy conservation awareness training, and transportation services for the elderly or handicapped and may include studies to improve existing and plan for future transportation systems in Texas.

(b) The Legislative Budget Board [~~office of the governor~~] may require grant recipients under this program to match the grants in ratios determined by the board [~~office~~].

Sec. 26. MASS TRANSIT ENERGY PROGRAM. (a) A competitive grant program to be known as the mass transit energy program is established. Under this program, the Texas Department of Transportation [~~supervising agency~~] shall distribute competitive grant money provided under this Act for projects concerning mass transit that are approved by the Legislative Budget Board [~~office of the governor~~] in accordance with this section.

(b) The Texas Department of Transportation [~~supervising agency~~] may allocate competitive grant money among the categories of eligible applicants according to the formula provided by this section. For purposes of this section, an "eligible applicant" is a municipality, a metropolitan or regional authority, or a local governmental body or other entity that is a recipient of federal public transportation money through the Texas [~~State~~] Department of [~~Highways and Public~~] Transportation or other agency administering federal public transportation money.

(c) The Texas Department of Transportation [~~supervising agency~~] may allocate competitive grant money to the following three categories:

(1) one-third to eligible applicants created under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes); Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes); or Article 1118z, Revised Statutes;

(2) one-third to eligible applicants that are in urbanized areas with a population in excess of 50,000, according to the most recent federal census and that are not created under the laws specified in Subdivision (1) of this subsection; and

(3) one-third to eligible applicants in rural areas of the state and in urban areas with populations of 50,000 or less, according to the most recent federal census.

(d) To the greatest extent practicable, eligible applicants who receive competitive grant money under this section [~~Act~~] shall use the money to obtain other grants.

SECTION 12. Subsection (a), Section 27, Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A competitive grant program to be known as the energy research in applications program is established. Under this program, the Texas Higher Education Coordinating Board [~~supervising agency~~] shall distribute competitive grant money provided under this Act for projects conducted by institutions of higher education and providing advanced research in energy-related subjects.

SECTION 13. Sections 28, 29, and 31, Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 28. DIESEL FUEL CONSERVATION PROGRAM. A competitive grant program to be known as the diesel fuel conservation program is established to implement projects which will improve the fuel efficiency of diesel-powered vehicles and equipment. Under the program, the energy office [~~supervising agency~~] shall use competitive grant money provided under this Act to benefit diesel fuel consumers by identifying and implementing measures to save diesel fuel. Projects may be funded to provide training and technical assistance and/or to demonstrate and implement commercially available technologies which improve the fuel efficiency of trucks, boats, tractors, or other vehicles and equipment which operate on diesel fuel.

Sec. 29. ENERGY RESOURCE OPTIMIZATION PROGRAM. A competitive grant program to be known as the energy resource optimization program is established. Under this program, the General Land Office [~~supervising agency~~] shall distribute competitive grant money provided under this Act for the initiation or supplementation of research programs designed to recover additional oil and gas from reservoirs in this state, with special emphasis on recovery from state and other public lands.

Sec. 31. TRAFFIC LIGHT SYNCHRONIZATION PROGRAM. (a) The Texas Department of Transportation [~~state department of highways and~~

~~public transportation~~] is the supervising agency for a competitive grant program to be known as the traffic light synchronization program. This program will provide assistance to local governments throughout the state in efforts to save motor fuels through the optimization of traffic signal timing plans.

(b) [~~(a)~~] The supervising agency shall award funds to local jurisdictions for the costs of training, engineering services, traffic studies, and other activities directly related to and undertaken as part of local traffic signal retiming projects.

(c) [~~(b)~~] The Legislative Budget Board [~~office of the governor~~] may require grant recipients under this program to match the grants in ratios determined by the board [~~office of the governor~~].

SECTION 14. The State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) is amended by adding Article 16 to read as follows:

ARTICLE 16. TEXAS ENERGY EFFICIENCY AND CONSERVATION PROGRAM

Sec. 16.01. POLICY. It is the policy of this state to promote energy efficiency and conservation within the state. Implementation of the program provided by this article will be in furtherance of that policy by making financial and technical assistance available to authorized borrowers to enable the borrowers to undertake energy efficiency and conservation projects.

Sec. 16.02. DEFINITIONS. In this article:

(1) "Authority" means the Texas Public Finance Authority.

(2) "Program" means the Texas energy efficiency and conservation program provided by this article.

(3) "Revenue bonds" means bonds, notes, commercial paper, or other obligations.

(4) "Revolving fund" means the Texas energy efficiency and conservation revolving fund.

Sec. 16.03. TEXAS ENERGY EFFICIENCY AND CONSERVATION REVOLVING FUND. (a) The Texas energy efficiency and conservation revolving fund is established in the state treasury.

(b) The revolving fund consists of the proceeds of revenue bonds issued as provided by this article, fees collected as provided by Section 16.06 of this article, federal grants, direct appropriations, income from investment or deposit of amounts in the fund, grants from private sources, and repayments of financial assistance made from the fund.

(c) The commission may provide for the establishment and maintenance of separate accounts within the revolving fund, including program accounts, and, at the direction of the authority, shall provide for interest and sinking accounts and reserve accounts relating to revenue bonds. The state treasurer shall hold the assets of the revolving fund in trust for the program and the repayment of bonds issued for the program. The revolving fund is a trust fund for all purposes, including the application of Sections 403.094, 403.095, and 404.071, Government Code.

(d) Money in the revolving fund may be appropriated only for the repayment of bonds issued for the program, the payment of costs of

issuance of the bonds, and making loans under and paying expenses for the administration of the program. The use of money from the fund must be consistent with Article III, Section 18, of the Texas Constitution.

(c) The commission and the authority shall jointly administer the revolving fund.

Sec. 16.04. AUTHORIZED BORROWERS AND ELIGIBLE PROJECTS. (a) An agency or governmental entity of the state and any political subdivision or other type of local governmental entity in the state, including a county, municipality, special purpose district, or corporation held by a governmental entity, is authorized to be a borrower under the program provided by this article.

(b) Any energy efficiency or conservation project undertaken by an authorized borrower involving the acquisition, construction, fabrication, installation, or maintenance of improvements, buildings, facilities, or equipment determined by the authorized borrower to promote the conservation or efficient use of energy sources is an eligible project for assistance under the program provided by this article, including a project involving the conversion of motor vehicles or other sources of substantial energy use to alternative fuels and engine-driven applications and a project involving the acquisition, construction, fabrication, installation, or maintenance of fueling stations supplying alternative fuels or equipment enhancing the use of engine-driven technology to support motor vehicles or other energy applications that use alternative fuels.

Sec. 16.05. TEXAS ENERGY EFFICIENCY AND CONSERVATION PROGRAM. (a) The commission shall establish and administer the Texas energy efficiency and conservation program, shall administer all loans made under the program, and shall collect loan payments and deposit them in the revolving fund. The commission shall adopt rules governing the application for financial assistance under the program and establish criteria for determining which authorized borrowers may participate in the program. In establishing criteria for participation in the program, the commission shall adopt requirements to ensure the full repayment of all financial assistance and the solvency of the program.

(b) The commission may adopt other rules it considers necessary to administer the program or considers in the best interests of the program.

Sec. 16.06. FEES. The commission shall set and collect, from applicants and borrowers under the program, fees the commission considers sufficient to cover the expenses of administering the program or considers in the best interest of the program. The commission shall deposit the fees in the revolving fund and shall apply the fees in accordance with the commission's resolutions and rules.

Sec. 16.07. ISSUANCE OF REVENUE BONDS. (a) The commission by resolution may periodically apply for the issuance of revenue bonds for the purpose of providing money for the revolving fund by submission to the authority of a request for financing that describes the projects to be financed. The total amount of bonds issued for the revolving fund and the program may not exceed $100 million. The commission shall submit each such resolution it adopts to the authority, and the authority is responsible for issuing the bonds for the commission.

(b) Proceeds of revenue bonds issued as provided by this article shall be deposited in the revolving fund and applied in accordance with the resolution applying for issuance of the bonds:

(1) to provide financial assistance to authorized borrowers; and

(2) to pay costs of issuance of those revenue bonds.

(c) Revenue bonds issued as provided by this article are obligations solely of the authority and are payable solely from money in the revolving fund, which is pledged to the repayment of the revenue bonds. The authority's revenue bonds under this article are not and do not create or constitute a pledge, giving, or lending of the faith, credit, or taxing power of the state. Each revenue bond issued under this article must contain a statement to the effect that the state is not obligated to pay the principal of or any premium or interest on the revenue bond and that neither the faith or credit nor the taxing power of the state is pledged, given, or loaned to such a payment.

(d) Revenue bonds of the authority shall be payable as to principal, interest, and redemption premium, if any, from and secured by a first lien or a subordinate lien on and pledge of all or any part of the property, revenues, income, or other resources in the revolving fund, and may be further secured by all or part of the net revenues dedicated under the loan documents by the borrower for payment of the revenue bonds, by taxes levied by the borrower for that purpose, or by a combination of taxes and net revenue from other available sources, as specified in the commission's resolution applying for issuance of those revenue bonds. The authority may require that the loans made under the program be supported both by taxes and by net revenue from the operation of the project in any ratio the authority considers necessary to fully secure the loans. The authority shall establish other conditions and requirements it considers to be consistent with sound investment practices and in the public interest.

(e) The commission may provide in a resolution applying for the issuance of revenue bonds a request for the issuance of additional revenue bonds to be equally and ratably secured by lien on the revenues and receipts or for the issuance of subordinate lien revenue bonds.

(f) Revenues of the commission that may be used as a source of payment for the revenue bonds or to establish a reserve account to secure the payment of debt service on the revenue bonds include repayments of financial assistance, money appropriated by the legislature to the commission for the purpose of paying or securing the payment of debt service on the revenue bonds, fees collected under Section 16.05 of this article, and federal or private money allocated to the program.

Sec. 16.08. DEFAULT. In the event of a default in payment of the principal of or interest on any loan made under the program or any other default with respect to the loan, the attorney general shall institute appropriate proceedings by mandamus or other legal remedies to compel the borrower or its officers, agents, and employees to cure the default by performing those duties that they are legally obligated to perform. These proceedings shall be brought and venue shall be in a district court of Travis County.

Sec. 16.09. GENERAL PROVISIONS RELATING TO BONDS. (a) The authority's revenue bonds under this article may be issued by the authority from time to time in one or more series or issues, in bearer, registered, or any other form, which may include registered uncertified obligations not represented by written instruments and commonly known as book-entry obligations, the registration of ownership and transfer of which shall be provided for by the authority under a system of books and records maintained by the authority. Bonds may mature serially or otherwise not more than 40 years from their date of issuance. Bonds may bear no interest or may bear interest at any rate or rates, fixed, variable, floating, or otherwise, determined by the authority or determined pursuant to any contractual arrangements approved by the authority, not to exceed the maximum net effective interest rate allowed by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes). Interest on the bonds may be payable at any time, and the rate of interest on the bonds may be adjusted at such time as may be determined by the authority or as may be determined pursuant to any contractual arrangement approved by the authority. In connection with the issuance of bonds as provided by this article, the authority may exercise the powers granted to the governing body of an issuer in connection with the issuance of obligations under Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

(b) The bonds issued under this article and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code. The bonds are exempt securities under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), and unless specifically provided otherwise, under any subsequently enacted securities law. Any contract, guaranty, or other document executed in connection with the issuance of bonds pursuant to this article is not a security under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), and unless specifically provided otherwise, any subsequently enacted securities law. The authority may do all things necessary to qualify the bonds for offer and sale under the securities laws and regulations of the United States and of the states and other jurisdictions in the United States as the authority determines.

(c) The bonds may be issued in the form and denominations and executed in the manner and under the terms, conditions, and details determined as provided by the authority in the resolution authorizing their issuance. If any officer whose manual or facsimile signature appears on the bonds ceases to be an officer, the signature is still valid and sufficient for all purposes as if the officer had remained in office.

(d) The bonds may be sold at public or private sale with or without public bidding in the manner, at such rate or rates, price or prices, and on such terms as may be determined by the authority or determined as provided in any contractual arrangement approved by the authority. The authority also may enter into any contractual arrangement under which the bonds are to be sold from time to time, or subject to purchase, at such

prices and rates, interest rate or payment periods, and terms as determined pursuant to that contractual arrangement approved by the authority.

(e) The authority may provide procedures for the replacement of a mutilated, lost, stolen, or destroyed bond or interest coupon.

(f) The resolutions of the authority issuing bonds may contain other provisions and covenants as the authority may determine. The authority may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds as provided by this article, including entering into financing agreements with the commission.

Sec. 16.10. APPLICATION OF TEXAS PUBLIC FINANCE AUTHORITY ACT. Section 10A, as added by Chapter 896, Acts of the 71st Legislature, Regular Session, 1989, and Sections 10B, 15, 16, 17, 18, 19, and 20, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), apply to revenue bonds issued by the authority under this article as if the bonds were issued under that Act for the construction of a building.

SECTION 15. The heading of Chapter 447, Government Code, is amended to read as follows:

CHAPTER 447. ENERGY MANAGEMENT CENTER
[~~OF THE OFFICE OF THE GOVERNOR~~]

SECTION 16. Section 447.001, Government Code, is amended to read as follows:

Sec. 447.001. ESTABLISHMENT OF CENTER. The energy management center is established in the General Services Commission [~~as a division of the office of the governor~~].

SECTION 17. Subsections (a), (c), and (d), Section 447.004, Government Code, are amended to read as follows:

(a) The [~~Through the~~] energy management center[~~, the office of the governor~~] shall adopt and publish energy conservation design standards, under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), that all new state buildings and major renovation projects, including buildings and major renovation projects of state-supported institutions of higher education, are required to meet. The center [~~office of the governor~~] shall define what constitutes a major renovation project under this section and shall review and update the standards biennially.

(c) The standards must be adopted in terms of energy consumption levels and must take into consideration the various classes of building uses and must allow for design flexibility. Procedural standards must be directed toward specific design and building practices that produce good thermal resistance and low infiltration and toward requiring practices in the design of mechanical and electrical systems that maximize energy efficiency. The procedural standards must concern, as applicable:

(1) insulation;

(2) lighting;

(3) ventilation;

(4) climate control;

(5) special energy requirements of health-related facilities of higher education and state agencies; and

(6) any other item that the center [~~office of the governor~~] considers appropriate that is adopted under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) In order to demonstrate compliance with the requirement to adopt and update the conservation design standards, each agency and institution of higher education shall submit a copy of its design and construction manuals to the center [~~office of the governor~~] on request.

SECTION 18. Sections 447.005, 447.006, and 447.007, Government Code, are amended to read as follows:

Sec. 447.005. ENERGY EFFICIENCY PROJECTS. Subject to applicable state and federal laws or guidelines, the [~~office of the governor, through the~~] energy management center[~~,~~] may implement energy efficiency projects at state agencies or may assist those agencies in implementing the projects through energy efficiency programs financed through state or federal grants or loans and shall provide staff for administration of the Texas energy efficiency and conservation program established under Article 16, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

Sec. 447.006. OBTAINING DATA. The energy management center [~~office of the governor~~] shall obtain semiannually from each state agency information relating to the cost of heating and cooling buildings owned by the state.

Sec. 447.007. MODEL CODES. The energy management center [~~office of the governor~~] may recommend model energy conservation building codes to municipalities for use in enacting or amending municipal ordinances.

SECTION 19. Subsection (a), Section 447.008, Government Code, is amended to read as follows:

(a) The [~~Through the~~] energy management center[~~, the office of the governor~~] may provide additional energy services to state and local governments, including:

(1) training of designated state and local governmental employees in energy management, energy-accounting techniques, and energy efficient design and construction;

(2) technical assistance to state agencies and local governments regarding energy efficient capital improvements, energy efficient building design, and cogeneration and thermal storage investments;

(3) technical assistance to the State Auditor and to state agencies regarding conducting energy management performance audits and monitoring of utility bills to detect billing errors;

(4) technical assistance to state agencies and local governments regarding third-party financing of energy efficient capital improvement projects; and

(5) other energy-related assistance requested by agencies, other legislatively created entities of the state, institutions of higher education, local governments, including school districts, and consortiums of institutions of higher education that the center [~~office of the governor~~] considers appropriate.

SECTION 20. Subsection (a), Section 447.011, Government Code, is amended to read as follows:

(a) The [~~Through the~~] energy management center[~~, the office of the governor~~] shall provide energy management planning assistance to state agencies and institutions of higher education, including:

(1) preparation of a long-range plan for the delivery of reliable, cost-effective utility services for state agencies, institutions of higher education, boards, and commissions in Travis County. This plan shall be presented to the affected agencies for use in preparing their five-year construction and major rehabilitation plans. After other energy-saving alternatives are considered, district heating and cooling and on-site generation of electricity may be considered in planning for reliable, efficient, and cost-effective utility services;

(2) assistance to the Department of Public Safety for energy emergency contingency planning, using state or federal funds when available; and

(3) assistance to state agencies and institutions of higher education in preparing comprehensive energy management plans. The energy management center shall prepare guidelines for the preparation of these plans. State agencies and institutions of higher education that expend more than $250,000 annually for heating, lighting, and cooling and that occupy state-owned buildings shall prepare and submit a five-year energy management plan to the center [~~office of the governor~~]. Agencies and institutions of higher education with smaller usage may be required to submit such plans. Updated plans shall be submitted biennially when requested by the center [~~governor~~].

SECTION 21. (a) Sections 5 and 20, Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), are repealed.

(b) On the effective date of this Act, all obligations and records of the revolving loan program created under Section 20, Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), are transferred to the General Services Commission and become property and obligations under the Texas energy efficiency and conservation program established under Article 16, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by this Act, and all obligations to the former program become obligations to the Texas energy efficiency and conservation program.

(c) If revenue bonds are issued under Article 16, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by this Act, and the bond proceeds are used to replace money appropriated from the oil overcharge account, the oil overcharge money that is replaced by those proceeds may be used only to finance projects under the Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes), for low-income individuals and low-wealth school districts.

SECTION 22. If **H.B. 2260**, 73rd Legislature, Regular Session, 1993, is enacted by the legislature and becomes law, this Act prevails, to the extent of conflict, over any provisions of **H.B. 2260** that purport to transfer responsibility for the administration of oil overcharge funds or the

responsibility for reporting on, monitoring, or administering a program under the Oil Overcharge Restitutionary Act (Article 4413(56), Vernon's Texas Civil Statutes).

SECTION 23. On the effective date of this Act, all powers, duties, obligations, records, and property of the office of the governor that are connected to a function that is transferred from the office of the governor to another entity by this Act and all appropriations to the office of the governor for functions transferred by this Act are transferred to the appropriate entity. All employees of the energy management center of the office of the governor are transferred to the General Services Commission. All rules, standards, and specifications of the office of the governor that relate to a function that is transferred by this Act remain in effect as rules, standards, and specifications of the entity to which the function is transferred unless superseded by proper authority of that entity.

SECTION 24. This Act takes effect September 1, 1993.

SECTION 25. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1234

Senator Turner submitted the following Conference Committee Report:

Austin, Texas
May 28, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1234** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

TURNER	T. HUNTER
TRUAN	JUNELL
ARMBRISTER	DELISI
SIBLEY	MARTIN
BARRIENTOS	SWINFORD
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the consolidation and dedication of funds in the Texas Natural Resource Conservation Commission; appropriating recovered costs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1

SECTION 1.01. Subsection (h), Section 26.0135, Water Code, is amended to read as follows:

(h) The commission [~~Texas Water Commission~~] shall apportion, assess, and recover the reasonable costs of administering the water quality management programs under this section from all users of water and wastewater permit holders in the watershed according to the records of the commission generally in proportion to their right, through permit or contract, to use water from and discharge wastewater in the watershed. The cost to river authorities and others to conduct regional water quality assessment shall be subject to prior review and approval by the commission as to methods of allocation and total amount to be recovered. The commission shall adopt rules to supervise and implement the water quality assessment and associated costs. The rules shall ensure that water users and wastewater dischargers do not pay excessive amounts, that a river authority may recover no more than the actual costs of administering the water quality management programs called for in this section, and that no municipality shall be assessed cost for any efforts that duplicate water quality management activities described in Section 26.177 of this chapter. Costs recovered by the commission are to be deposited to the water quality fund and are appropriated to the commission for the administration of this section and the implementation of regional water quality assessments.

SECTION 1.02. Subsection (f), Section 5.235, Water Code, is amended to read as follows:

(f) A person who files a bond issue application with the commission must pay an application fee set by the commission. The commission by rule may set the application fee in an amount not to exceed $500, plus the cost of required notice. If the bonds are approved by the commission, the seller shall pay to the commission a percentage of the bond proceeds not later than the seventh business day after receipt of the bond proceeds. The commission by rule may set the percentage of the proceeds in an amount not to exceed 0.25 percent of the principal amount of the bonds actually issued. Revenue from these fees and application fees under Subsection (e) of this section shall be deposited in the state treasury and credited to the water utility [~~quality~~] fund. Proceeds of the fees shall be used to supplement any other funds available for paying expenses of the commission in supervising the various bond and construction activities of the districts filing the applications.

SECTION 1.03. Subsection (c), Section 26.0291, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

(c) The fees collected under this section shall be deposited in a special fund in the state treasury to be known as the water quality [~~waste treatment facility inspection~~] fund. Money in the fund shall be used as follows:

(1) to supplement any other funds available for paying expenses of the commission in inspecting waste treatment facilities;

(2) to pay for the issuance and renewal of certificates of competency under and to administer Section 26.0301 of this code; and

(3) to pay for processing plans or amendments to plans and inspecting the construction of projects under those plans pursuant to Section 26.0461 of this code and rules of the commission adopted under Sections 26.046 and 26.0461 of this code.

SECTION 1.04. Subsection (e), Section 26.0301, Water Code, is amended to read as follows:

(e) The commission by rule shall set a fee to be paid by each applicant or licensee on the issuance or renewal of a certificate of competency under this section. The amount of the fee is determined according to the costs of the commission in administering this section, but may not exceed $25 annually for an individual wastewater treatment plant operator and $500 annually for a person, company, corporation, firm, or partnership that is in the business as a wastewater treatment facility operations company. The commission shall deposit any fees collected under this subsection in the state treasury to the credit of the water quality [~~waste treatment facility inspection~~] fund.

SECTION 1.05. Subsection (h), Section 26.0461, Water Code, is amended to read as follows:

(h) A fee collected under this section shall be deposited in the State Treasury to the credit of the water quality [~~waste treatment facility inspection~~] fund.

SECTION 1.06. Sections 370.007 and 370.008, Health and Safety Code, are amended to read as follows:

Sec. 370.007. TOXIC CHEMICAL RELEASE REPORTING FUNDS [~~FUND~~]. (a) Toxic [~~The toxic~~] chemical release reporting funds [~~fund~~] consists of money collected by the commission from:

(1) fees imposed on owners and operators of facilities required to submit a toxic chemical release form; and

(2) penalties imposed under this chapter.

(b) The commission may use the money collected under this chapter [~~and deposited in the fund~~] to pay for:

(1) costs incurred by the commission in implementing this chapter; and

(2) other commission activities necessary to implement the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

Sec. 370.008. Disposition of [~~TOXIC CHEMICAL RELEASE FORM REPORTING~~] FEES. (a) The owner or operator of a facility required to submit a toxic chemical release form under this chapter shall pay, at the time of the submission, a fee of $25 for each toxic chemical release form submitted.

(b) The maximum fee for a facility may not exceed $250.

(c) The commission by rule may increase or decrease the toxic chemical release form reporting fee as necessary.

(d) Fees collected under this section shall be deposited in the state treasury to the credit of the hazardous and solid waste fee [~~toxic chemical release reporting~~] fund.

ARTICLE 2

SECTION 2.01. The following funds and accounts and revenues authorized to be deposited to these funds and accounts are exempt from the provisions of Subsection (h), Section 403.094, Government Code. Except as amended by this Act, these funds and accounts are dedicated to the purposes for which they were established under the applicable provisions of law. The comptroller may, with the concurrence of the state treasurer, establish any of the following funds as dedicated accounts in the general revenue fund, provided that such accounts maintain any attributes authorized under provisions of law:

(1) the solid waste disposal fee fund authorized under Sections 361.013 and 361.014, Health and Safety Code;

(2) the waste tire recycling fund authorized under Sections 361.474 and 361.475, Health and Safety Code;

(3) the water well drillers fund authorized under Sections 32.014 and 33.012, Water Code;

(4) the used oil recycling fund authorized under Section 371.061, Health and Safety Code;

(5) the clean air fund authorized under Section 382.0622, Health and Safety Code;

(6) the water quality fund authorized under Subsection (f), Section 5.235, Water Code, and Sections 26.0291, 26.0301, and 26.0461, Water Code, as amended by this Act;

(7) the water rights administration fund authorized under Section 12.113, Water Code;

(8) the water utility fund authorized under Section 5.235, Water Code;

(9) the spill response fund authorized under Section 26.265, Water Code;

(10) the Texas irrigators fund authorized under Section 34.005, Water Code;

(11) the hazardous and solid waste fees fund authorized under Sections 361.132 and 370.008, Health and Safety Code, as amended by this Act;

(12) the hazardous and solid waste remediation fee fund authorized under Section 361.133, Health and Safety Code;

(13) the storage tank fund authorized under Section 26.358, Water Code, and Section 8, Chapter 244, Acts of the 71st Legislature, Regular Session, 1989 (Article 8900, Vernon's Texas Civil Statutes); and

(14) the petroleum storage tank remediation fund authorized under Section 26.3573, Water Code.

SECTION 2.02. The funds and accounts described in Section 2.01 of this Act are further exempt from any provision of Subsection (b), Section 403.095, Government Code, that would authorize the expenditure or transfer of dedicated revenues inconsistent with Section 2.01 of this Act. Nothing in this section shall otherwise limit the authority of the legislature to appropriate funds from any fund or account.

ARTICLE 3

SECTION 3.01. The waste treatment facility inspection fund and the toxic chemical release reporting fund are abolished effective September 1, 1993.

SECTION 3.02. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 172

Senator Sims submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 172** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

SIMS	B. TURNER
SHELLEY	RAMSAY
TRUAN	SAUNDERS
ARMBRISTER	WEST
BIVINS	EARLEY
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to pipeline easements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 111, Natural Resources Code, is amended by adding Section 111.0194 to read as follows:

Sec. 111.0194. PIPELINE EASEMENTS. (a) Unless the terms of the grant or the condemnation judgment expressly provide otherwise, or the easement rights otherwise prescriptively owned through actual use are greater, an easement created through grant or through the power of eminent domain for the benefit of a single common carrier pipeline for which the

power of eminent domain is available under Section 111.019 of this code as of January 1, 1994, is presumed to create an easement in favor of the common carrier pipeline, or a successor in interest to the common carrier pipeline, that extends only a width of 50 feet as to each pipeline laid under the grant or judgment in eminent domain prior to January 1, 1994.

(b) The presumption in Subsection (a) of this section is not applicable to pipeline easements of a common carrier pipeline granted under the terms of an oil and gas lease or oil, gas, and mineral lease, or to any easement which authorizes the construction of gathering lines.

(c) The presumption set out in Subsection (a) of this section on the limitation of width may be rebutted by evidence on behalf of the common carrier pipeline that a greater width is reasonably needed for purposes of operation, construction of additional lines under the grant or judgment in an eminent domain proceeding, maintenance, repair, replacement, safety, surveillance, or as a buffer zone for protection of the safe operation of the common carrier pipeline, together with such other evidence as a court may deem relevant to establish the extent of an easement in excess of 50 feet in width.

(d) The presumption in Subsection (a) of this section shall apply separately as to each pipeline under a grant or judgment which allows more than one pipeline on the subservient estate.

(e) This section shall not be deemed to limit any rights of ingress to or egress from easements that may exist under the original grant, prescriptive rights, or common law.

(f) This section does not limit or otherwise affect the rights of parties engaged in litigation before January 1, 1994.

SECTION 2. This Act takes effect January 1, 1994.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 865

Senator Sims submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 865** have

met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

SIMS	YOST
ARMBRISTER	LEWIS
BIVINS	BOSSE
SHELLEY	COMBS
TRUAN	B. TURNER
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 31

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 28, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 31** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

WEST	R. CUELLAR
PARKER	ERICKSON
ELLIS	SOLIS
MADLA	
ROSSON	
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 711

Senator Sibley submitted the following Conference Committee Report:

Austin, Texas
May 28, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 711** have

met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

SIBLEY	BRIMER
SIMS	T. HUNTER
BIVINS	CRABB
RATLIFF	AVERITT
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 284

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas
May 28, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 284** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

BARRIENTOS	MAXEY
CARRIKER	GREENBERG
ROSSON	DELCO
WENTWORTH	NAISHTAT
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 473

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 473** have met

and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WEST	DUTTON
WHITMIRE	OAKLEY
NELSON	BAILEY
ELLIS	CARTER
LUNA	YOST
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to training for persons licensed by the Commission on Law Enforcement Officer Standards and Education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 415.032, Government Code, is amended by amending Subsection (b), as amended by Section 1, Chapter 469, and Section 1, Chapter 773, Acts of the 71st Legislature, Regular Session, 1989, and by adding Subsection (c) to read as follows:

(b) In establishing requirements under this section, the commission shall require courses and programs to provide training in the investigation of cases that involve the following:

(1) [~~involving~~] child abuse;

(2) child [~~or~~] neglect;

(3) [~~,~~] family violence; and

(4) [~~; or~~] sexual assault[~~. In addition to this training, the commission shall direct law enforcement agencies to provide continuing in-house instruction for its officers in the recognition of cases involving child abuse or neglect, family violence, or sexual assault~~].

(c) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on civil rights, racial sensitivity, and cultural diversity for individuals licensed under this chapter.

SECTION 2. Section 415.034, Government Code, is amended to read as follows:

Sec. 415.034. CONTINUING EDUCATION. (a) The commission shall [~~may~~] recognize, prepare, or administer [~~voluntary~~] continuing education programs for officers and county jailers.

(b) The commission shall [~~may~~] require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program every 24 months [~~during a 24-month period~~]. The course must:

(1) be approved by the commission; and

(2) [~~; must~~] include education and training in:

(A) civil rights, racial sensitivity, and cultural diversity; and

(B) the recognition of cases that involve the following:

(i) [~~involving~~] child abuse;

(ii) child [~~or~~] neglect;

(iii) family violence; and

(iv) sexual assault.

(c) The course provided under Subsection (b)[~~; and~~] may not exceed 40 hours.

(d) A peace officer appointed to the officer's first supervisory position must receive in-service training on supervision as part of the course provided under Subsection (b) during the 24-month period after the date of that appointment.

(e) An honorably retired commissioned officer of the Department of Public Safety who is a special ranger under Section 411.023 may not be required to undergo training under Subsection (b) [~~this subsection~~].

(f) The commission may require a state, county, special district, or municipal agency that appoints or employs a reserve law enforcement officer, county jailer, or public security officer to provide each of those individuals with education and training in civil rights, racial sensitivity, and cultural diversity every 24 months.

SECTION 3. (a) The Commission on Law Enforcement Officer Standards and Education shall establish the new education and training programs required by this Act not later than January 1, 1994.

(b) For persons who are officers on September 1, 1993, the first set of courses required under Section 415.034, Government Code, as amended by this Act, must be completed before September 1, 1995.

SECTION 4. This Act takes effect September 1, 1993.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1540

Senator Parker submitted the following Conference Committee Report:

Austin, Texas
May 28, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1540** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

PARKER	SHIELDS
ELLIS	ALVARADO
HALEY	BRIMER
HARRIS OF TARRANT	HARRIS
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1719

Senator Montford submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1719** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

MONTFORD	JUNELL
ARMBRISTER	McDONALD
HALEY	DENTON
RATLIFF	SWINFORD
ZAFFIRINI	TELFORD
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1062

Senator Parker submitted the following Conference Committee Report:

Austin, Texas
May 27, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1062** have

met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

PARKER	CAIN
MONCRIEF	BERLANGA
ELLIS	COLEMAN
SHELLEY	DELISI
WHITMIRE	GLAZE
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and operation of the Texas State Board of Medical Examiners and to the regulation of the practice of medicine, including the practice of acupuncture; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.03(a), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by amending Subdivisions (5) and (6) and adding Subdivisions (15) and (16) to read as follows:

(5) "Health-care entity" means:

(A) a hospital that is licensed pursuant to Chapter 241, Health and Safety Code or the Texas Mental Health Code (Articles 5547-88 through 5547-100, Vernon's Texas Civil Statutes);

(B) an entity, including a health maintenance organization, group medical practice, nursing home, health science center, university medical school, or other health-care facility, that provides medical or health-care services and that follows a formal peer review process for the purposes of furthering quality medical or health care; [~~and~~]

(C) a professional society or association, or committee thereof, of physicians that follows a formal peer review process for the purpose of furthering quality medical or health care; and

(D) an organization established by a professional society or association of physicians or of hospitals, or both, that collects and verifies the authenticity of documents and other data concerning the qualifications, competence, or performance of licensed health care professionals and that acts as a health care facility's agent pursuant to the Health Care Quality Improvement Act of 1986, Title IV, Public Law 99-660.

(6) "Medical peer review committee" or "professional review body" means a committee of a health-care entity, the governing board of a health-care entity, or the medical staff of a health-care entity, provided the committee or medical staff operates pursuant to written bylaws that have been approved by the policy-making body or the governing board of the health-care entity and authorized to evaluate the quality of medical and health-care services or the competence of physicians, including those functions specified by Section 85.204, Health and Safety Code, and its subsequent amendments. Such a committee includes the employees and agents of the committee, including assistants, investigators, intervenors,

attorneys, and any other persons or organizations that serve the committee in any capacity.

(15) "Surgery" includes surgical services, surgical procedures, surgical operations, and the procedures described in the surgery section of the Common Procedure Coding System as adopted by the Health Care Financing Administration of the United States Department of Health and Human Services.

(16) "Operation" means the application of surgery or the performance of surgical services.

SECTION 2. Sections 2.02 and 2.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2.02. MEMBERS, TERMS. The board is composed of 18 [~~15~~] members whose terms of office are six years or until a successor is appointed and qualified. Terms of office shall be staggered so that six [~~five~~] terms expire biennially.

Sec. 2.03. APPOINTMENT TO BOARD. Members of the board shall be appointed by the governor and confirmed by the senate. Any vacancy on the board shall be filled by appointment of the governor. Any appointment made shall be without regard to race, color, disability [~~creed~~], sex, religion, age, or national origin, except that a person younger than 18 years of age is not eligible for appointment.

SECTION 3. Section 2.04, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.04. REMOVAL FROM OFFICE. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Sections 2.05(a), (b), (c), (d), and (e) of this Act;

(2) does not maintain during service on the board the qualifications required by Sections 2.05(a), (b), (c), (d), and (e) of this Act;

(3) violates a prohibition established by Section 2.05(f), (g), (h), (i), or (k) of this Act;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year[~~; during a member's service on the board, the member fails to meet the qualifications set forth in this Act for members of the board. The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed~~].

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists [~~Each member of the board shall be present for at least one-half of the regularly scheduled board meetings held each year. Failure of a board member to meet this requirement is grounds for removal of the member from the board and the removal creates a vacancy on the board~~].

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the

board of the ground. The president shall then notify the governor that a potential ground for removal exists.

SECTION 4. Section 2.05, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by amending Subsections (b), (c), (d), (g), (h), and (i) and adding Subsections (j), (k), and (l) to read as follows:

(b) Nine members of the board must:

(1) be learned and eminent physicians licensed to practice medicine within this state for at least three years prior to appointment and be graduates of a reputable medical school or college with a degree of doctor of medicine (M.D.); [~~and~~]

(2) have been actively engaged in the practice of medicine for at least five years immediately preceding their appointment; and

(3) have been actively engaged in organized peer review at a health care entity for at least three years immediately preceding their appointment.

(c) Three members of the board must:

(1) be learned and eminent physicians licensed to practice medicine within this state for at least three years prior to appointment and be graduates of a reputable medical school or college with a degree of doctor of osteopathic medicine (D.O.); [~~and~~]

(2) have been actively engaged in the practice of medicine for at least five years immediately preceding their appointment; and

(3) have been actively engaged in organized peer review at a health care entity for at least three years immediately preceding their appointment.

(d) Six [~~Three~~] members of the board must be public representatives who are not licensed to practice medicine, who are not financially involved in any organization subject to the regulation of the board, and who are not providers of health care. "Provider of health care" means:

(1) an individual who is a direct provider of health care (including but not limited to a dentist, registered nurse, licensed vocational nurse, chiropractor, podiatrist, physician assistant, psychologist, athletic trainer, physical therapist, social psychotherapist, pharmacist, optometrist, hospital administrator, or nursing home administrator) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities or institutions (including but not limited to hospitals, long-term care facilities, out-patient facilities, and health maintenance organizations) in which such care is provided and, when required by law or otherwise, the individual has received professional or other training in the provision of such care or in such administration and is licensed or certified or holds himself out for such provision or administration;

(2) one who is an indirect provider of health care in that the individual holds a fiduciary position with or has a fiduciary interest in an entity described below in this subdivision; for purposes of this subdivision, a fiduciary position or interest as applied to any entity means a position or interest with respect to such entity affected with the character of a trust, including members of boards of directors and officers, majority

shareholders, or agents, and receivers (either directly or through their spouses) of more than one-tenth of their annual income from any one or combination of fees or other compensation for research into or instruction in the provision of health-care entities (or associations or organizations composed of such entities) engaged (or comprised of individuals who are engaged) in the provision of health care or in the provision of health care and entities (or associations or organizations composed of such entities engaged in producing drugs or other such articles);

(3) one who is a member of the immediate family of an individual described in this subsection; for purposes of this subsection "immediate family" as applied to any individual includes only his parents, spouse, children, brothers, and sisters who reside in the same household;

(4) one who is engaged in or employed by an entity issuing any policy or contract of individual or group health insurance or hospital or medical service benefits; or

(5) one who is employed by, on the board of directors of, or holds elective office by or under the authority of any unit of federal, state, or local government or any organization that receives a significant part of its funding from any such unit of federal, state, or local government.

(g) An officer, employee, or paid consultant of a Texas trade or professional association in the field of health care may not be a member or employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(h) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade or professional association in the field of health care may not be a board member and may not be a board employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(i) For the purposes of this section, a "Texas trade or professional association" is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(j) A person may not serve as a member of the board if the person is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments, because of the person's activities for compensation on behalf of a profession related to the operation of the board [~~A person required to register as a lobbyist under Chapter 305, Government Code, by virtue of his activities on behalf of a trade or professional association in the regulated profession may not act as a member of the board~~].

(k) [~~(h)~~] A person is ineligible for appointment to the board if, at the time of appointment, the person is a stockholder, paid full-time faculty member, or a member of the board of trustees of a medical school.

(l) [~~(i)~~] All board members must take the official oath.

SECTION 5. Section 2.07(a), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Not later than December after each regular session of the legislature [~~At the first meeting of the board after each biennial appointment~~], the governor shall appoint from the members of the board a president and the board shall elect from its members a [~~president,~~] vice-president, secretary-treasurer, and other officers as are required, in the opinion of the board, to carry out its duties.

SECTION 6. The Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) is amended by adding Section 2.081 to read as follows:

Sec. 2.081. TRAINING AND GUIDELINES FOR MEMBERS OF THE BOARD. (a) The board shall establish a training program for the members of the board.

(b) Before a member of the board may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of the training program established under this section.

(c) A training program established under this section shall provide information to a participant regarding:

(1) the enabling legislation that created the board to which the member is appointed;

(2) the programs operated by the agency;

(3) the role and functions of the agency;

(4) the rules of the agency with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the agency;

(6) the results of the most recent formal audit of the agency;

(7) the requirements of the:

(A) open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments;

(B) open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(C) Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by that state agency or the Texas Ethics Commission.

(d) In developing the training requirements provided for in this section, the board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.

(e) In the event that another state agency or entity is given the authority to establish the training requirements, the board shall allow that training in lieu of developing its own program.

SECTION 7. Section 2.09, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by amending Subsections (b),

(c), (g), (k), (s), and (u) and adding Subsections (b-1), (x), (y), (z), and (aa) to read as follows:

(b) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board. The board shall appoint an executive director who shall be its chief executive and administrative officer, who shall be charged with the primary responsibility of administering, enforcing, and carrying out the provisions of the Medical Practice Act under the control and supervision and at the direction of the board. The executive director shall hold such position at the pleasure of board and may be discharged at any time. The board may act under its rules through the executive director, an executive committee, or other committee, unless otherwise specified in this Act. The executive committee shall be the president, vice-president, and secretary-treasurer except where otherwise provided in this Act[~~. Any duty of the secretary-treasurer in this Act may be performed by the executive director within the discretion of the board. Any reference to secretary-treasurer shall have the same meaning as executive director when so designated by the board~~].

(b-1) The executive director may employ a chief operating officer who shall be primarily responsible for administering, implementing, and monitoring systems and necessary measures to promote quality and efficiency of ongoing board operations and other duties as may be assigned by the executive director. If the board appoints an executive director who is not a physician licensed to practice in this state, the executive director shall appoint a medical director who is a physician licensed to practice in this state and who shall be primarily responsible for implementing and maintaining policies, systems, and measures regarding clinical and professional issues and determinations. The chief operating officer or medical director shall act under the control and supervision and at the direction of the executive director.

(c) The board may make rules and establish fees as are reasonable relating to the granting and extension of expiration dates of temporary licenses and the placing of licensees on inactive status. The board shall by rule set time limits on the periods for which licensees may hold temporary licenses or maintain inactive status.

(g) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments, because of the person's activities for compensation on behalf of a profession related to the operation of the board [~~A person who is required personally to register as a lobbyist under Chapter 305, Government Code, representing physicians, health-care entities, or health-care related professions, may not be employed by the board in any capacity~~].

(k) The board [~~shall establish~~] by rule shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this Act. The fees set by the board may be adjusted so that the total fees collected shall be sufficient to meet the expenses of administering this Act. The board may not set a fee for an amount less than the amount of that fee on September 1, 1993 [a

~~reasonable charge for those fees not specifically determined but authorized by this Act~~]. The board may not waive collection of any fee or penalty. The board shall place all fees received under authority of this Act, not otherwise specified, into the medical licensing fund. The board is authorized and shall by annual budget determine the manner of handling the funds and the purpose, consistent with this Act, for which the same may be used. The budgeted expenses authorized by the board shall not be a charge upon the general revenue of the state nor paid from the general revenue.

(s)(1) The board shall prepare information of public [~~consumer~~] interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(2) The board by rule shall establish methods by which the public and licensees of the board are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notification:

(A) on each registration form, application, or written contract for services of an individual or entity regulated under this Act;

(B) on a sign prominently displayed in the place of business of each individual or entity regulated under this Act; or

(C) in a bill for services provided by an individual or entity regulated under this Act.

(3) The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law [~~regulatory functions of the board and describing the board's procedures by which consumer complaints are filed with and resolved by the board~~]. On written request the board shall make information available to the general public for a reasonable fee to cover expenses and appropriate state agencies including a summary of any previous disciplinary orders by the board against a specific physician licensed in this state, the date of the order, and the current status of the order. The board shall establish an eight-hour toll-free telephone number to make the information immediately available to any caller if the board is not required to establish a toll-free telephone number under other state law.

(u) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all nonentry level positions concurrently with any public posting [~~board shall cause to be developed an intraagency career ladder program, one part of which shall be the intraagency posting of each job opening with the board in a nonentry-level position. The intraagency posting shall be made at least 10 days before any public posting~~].

(x) Each board member shall comply with the board member training requirements established by any other state agency that is given authority to establish the requirements for the board.

(y) The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(z) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(aa) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs. The board shall also comply with federal and state laws for program and facility accessibility.

SECTION 8. The Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) is amended by adding Section 2.10 to read as follows:

Sec. 2.10. EQUAL EMPLOYMENT OPPORTUNITY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that are in compliance with requirements of the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments;

(2) a comprehensive analysis of the board's work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board's work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) of this section must cover an annual period, be updated annually and reviewed by the Commission on Human Rights for compliance with requirements of the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 9. Sections 3.01(a), (c), (f), (h), and (i), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) All persons now lawfully qualified to practice medicine in this state, or who are hereafter licensed for the practice of medicine by the board, shall be registered as practitioners with the board on or before the first day of January and thereafter shall register in like manner annually, on or before the first day of January of each succeeding year. Each person

so registered with the board shall pay, in connection with each annual registration and for the receipt hereinafter provided for, a fee established by the board which fee shall accompany the application of each person for registration. The payment shall be made to the board. Every person so registered shall file with the board a written application for annual registration, setting forth his name and mailing address, the place or places where the applicant is engaged in the practice of medicine, and other necessary information prescribed by the board. If the person is licensed for the practice of medicine by another state, the District of Columbia, a territory of the United States, Canada, any other country, or the uniformed services of the United States, the application must include a description of any investigations the person knows are in progress and of any sanctions imposed by or disciplinary matters pending in the state, district, territory, country, or service.

(c)(1) A person may renew an unexpired license by paying to the board on or before the expiration date of the license the required renewal fee.

(2) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

(3) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(4) If a person's license has been expired for one year, it is considered to have been canceled, and the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(5) The board may renew without examination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for not more than two years preceding application. The person must pay to the board a fee that is equal to the examination fee for the license. [~~Failure of any licensee to pay the annual license renewal fee on or before the 90th day after the date it is due automatically cancels his licensure. Any licensee whose license has been canceled because of failure to pay the annual license renewal fee may secure reinstatement of his license at any time within that license year upon payment of the delinquent fee together with a penalty in an amount as the board may determine to be reasonable. After expiration of the license year for which the license fee was not paid, no license shall be reinstated except upon application and satisfaction of other conditions as the board may establish and payment of delinquent fees and a penalty to be assessed by the board.~~]

(f) [~~In performing its duties as provided in this Act, the board may act through the secretary-treasurer of the board. The secretary-treasurer is entitled to a salary to be fixed by the legislature in its General Appropriations Act for the performance of duties under this Act.~~] The executive director [~~secretary-treasurer~~] of the board shall file a surety bond

with the board. The bond shall be in an amount not less than $10,000, be in compliance with the insurance laws of the state, and be payable to the state for the use of the state if the executive director [~~secretary-treasurer~~] does not faithfully discharge the duties of the office. The board shall pay the premium on the bond. [~~The salary shall be paid out of said medical registration fund and shall not be in any way a charge upon the general revenue of the state.~~]

(h) The [~~secretary-treasurer or the~~] executive director shall review each application for licensure by examination or reciprocity and shall recommend to the board all applicants eligible for licensure. The [~~secretary-treasurer or the~~] executive director also shall report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. An applicant deemed ineligible for licensure by the [~~secretary-treasurer or the~~] executive director may request review of such recommendation by a committee of the board within 20 days of receipt of such notice, and the [~~secretary-treasurer or the~~] executive director may refer any application to said committee for a recommendation concerning eligibility. If the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons therefor, shall be submitted to the board unless the applicant requests a [~~an appellate~~] hearing [~~before a hearing examiner appointed by the board~~] within 20 days of receipt of notice of the committee's determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act and its subsequent amendments and the rules of the State Office of Administrative Hearings and the board. The committee may refer any application for determination of eligibility to the full board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant for licensure [~~an appellate hearing on its own motion. The board may elect to hear any appeal in lieu of proceedings before a hearing examiner, and it shall adopt, modify, or reject each decision made by a hearing examiner. The board also shall adopt, modify, or reject each recommendation of ineligibility made by the secretary-treasurer or the executive director or by the committee, unless the applicant has requested a timely review of the recommendation. Such action by the board shall constitute a final administrative decision concerning licensure. Any hearing before the board or before a hearing examiner under this subsection becomes a contested case under the Administrative Procedure Act~~]. A physician whose application for licensure is denied by the board shall receive a written statement[~~, upon request,~~] containing the reasons for the board's action. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Open Records Law. The board may disclose such reports to appropriate licensing authorities in other states [~~upon request~~].

(i) At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the licensee's last known address according to the records of the board [~~The board must notify each delinquent licensee of his impending~~

~~license cancellation by registered or certified mail sent to the licensee's address listed with the board not less than 30 days prior to the cancellation. This requirement shall be waived when the licensee has requested in writing that his or her license be canceled~~].

SECTION 10. The Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) is amended by adding Section 3.025 to read as follows:

Sec. 3.025. CONTINUING MEDICAL EDUCATION. (a) The board by rule shall adopt, monitor, and enforce a reporting program for continuing medical education of licensees. The board shall adopt and administer rules:

(1) requiring the number of hours of continuing medical education the board determines appropriate as a prerequisite to the annual registration of a licensee under this Act;

(2) requiring at least one-half of the hours of continuing medical education required under Subdivision (1) of this subsection to be approved by the board after taking into account the standards of the American Medical Association for its Physician's Recognition Award, the Council on Medical Specialty Societies, or the American Osteopathic Association and permitting the remaining hours to be composed of self-study or equivalent self-directed continuing medical education according to guidelines determined by the board; and

(3) adopting a process to assess a licensee's participation in continuing medical education courses.

(b) A licensee shall be presumed to have complied with this section if in the preceding 36 months the licensee becomes board certified or recertified in a medical specialty and the medical specialty program takes into consideration the standards of the American Board of Medical Specialties, the American Medical Association, the Advisory Board for Osteopathic Specialists and Boards of Certification, or the American Osteopathic Association.

(c) The board may temporarily exempt a licensee from the requirement for continuing medical education for:

(1) catastrophic illness;

(2) military service of longer than one year's duration outside the state;

(3) medical practice and residence of longer than one year's duration outside the United States; or

(4) good cause shown on written application of the licensee that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for continuing medical education.

(d) A temporary exemption under Subsection (c) of this section may not exceed one year but may be renewed annually.

(e) Subsection (a) of this section does not apply to a licensee who is retired and has been exempted by rule from paying the annual registration fee.

(f) This section does not prevent the board from taking disciplinary action with respect to a licensee or an applicant for a license by requiring

additional hours of continuing medical education or of specific course subjects.

SECTION 11. Section 3.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by amending Subsections (a)-(f) and adding Subsection (h) to read as follows:

(a) The board, at its sole discretion and upon payment by an applicant of a fee prescribed by the board under this Act, may grant a license to practice medicine to any [~~reputable~~] physician who is a graduate of an acceptable [~~a reputable~~] medical college as determined by the board and who[~~:~~

[~~(1)~~] is a licensee of another state or Canadian province having requirements for physician registration and practice substantially equivalent to those established by the laws of this state[~~; or~~

[~~(2) is qualified by an examination for a certificate to practice medicine under a commission in the uniformed services of the United States~~].

(b) An application for a license under this section must be in writing and upon a form prescribed by the board. The application must be accompanied by:

(1) a diploma or photograph of a diploma awarded to the applicant by an acceptable [~~a reputable~~] medical college and a certified transcript showing courses and grades [~~or a certificate, license, or commission issued to the applicant by the Medical Corps of the uniformed services of the United States~~];

(2) a license or a certified copy of a license to practice medicine lawfully issued to the applicant[~~, on examination,~~] by some other state or a Canadian province that requires in its examination the same general degree of fitness required by this state and that grants the same reciprocal privileges to persons licensed by the board; [~~or~~]

(3) a certification made by [~~an executive officer of the uniformed services of the United States,~~] the president or secretary of the board that issued the license[~~,~~] or a duly constituted registration office of the state or Canadian province that issued the certificate or license, reciting that the accompanying certificate or license has not been canceled, suspended, or revoked [~~except by honorable discharge from the Medical Corps of the uniformed services of the United States~~] and reciting that the statement of the qualifications made in the application for medical license in Texas is true and correct; and

(4) evidence of a passing grade on an examination required by the board.

(c) Applicants for a license under this section must subscribe to an oath in writing before an officer authorized by law to administer oaths. The written oath must be a part of the application. The application must:

(1) state that:

(A) [~~(1)~~] the license, certificate, or authority under which the applicant has most recently practiced medicine in the state or Canadian province from which the applicant is transferring to this state [~~removed~~] or in the uniformed service in which the applicant served is [~~was at the~~

~~time of the removal or completion of service~~] in full force and not restricted, canceled, suspended, or revoked;

(B) [~~(2)~~] the applicant is the identical person to whom the certificate or[~~,~~] license[~~, or commission~~] and the diploma were issued;

(C) [~~(3)~~] no proceeding has been instituted against the applicant for the restriction, cancellation, suspension, or revocation of the certificate, license, or authority to practice medicine in the state, Canadian province, or uniformed service of the United States in which it was issued; and

(D) [~~(4)~~] no prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony;

(2) include a description of any sanctions imposed by or disciplinary matters pending in the state or Canadian province in which the applicant was or is licensed or certified to practice medicine; and

(3) include evidence of postgraduate training required by the board.

(d) An applicant for a license under this section must [~~A "reputable physician" means one who would~~] be eligible for examination by the board. [~~A "reputable medical school or college" means a medical school or college that was approved by the board at the time the applicant's degree was conferred.~~]

(e) In addition to other licensure requirements, the board may require by rule and regulation that an applicant who is a licensee of another state or Canadian province and who is a graduate [~~graduates~~] of a medical school [~~schools~~] located outside of the United States and Canada, or the school itself [~~schools themselves~~], provide additional information to the board concerning the medical school attended prior to approval of the applicant.

(f) The board may refuse to issue a license to an applicant who is a licensee of another state or Canadian province and who graduated from a medical school outside of the United States and Canada if it finds that the applicant does not possess the requisite qualifications to provide the same standard of medical care as provided by a licensed physician in this state.

(h) The board may not refuse to issue a license to an applicant under Subsection (f) of this section if the applicant:

(1) for the preceding five years has been a licensee of another state or Canadian province;

(2) is not the subject of a sanction imposed by or disciplinary matter pending in any state or Canadian province in which the applicant is licensed to practice medicine; and

(3) is either specialty board certified by a board that is a member of the American Board of Medical Specialties or a specialty board approved by the American Osteopathic Association or successfully passes an examination that the board shall determine by rule.

SECTION 12. The Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) is amended by adding Section 3.0305 to read as follows:

Sec. 3.0305. TEMPORARY LICENSE FOR OUT-OF-STATE PRACTITIONERS. (a) On application, the board shall grant a temporary license to practice medicine. An applicant for a temporary license under this section must:

(1) have a current, active, and unrestricted license, without any pending disciplinary matters, as a physician in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this Act;

(2) have passed a national or other examination recognized by the board relating to the practice of medicine; and

(3) be sponsored by a person licensed by the board under this Act with whom the temporary license holder may practice under this section.

(b) An applicant for a temporary license may be excused from the requirement of Subsection (a)(3) of this section if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) A temporary license is valid until the date the board approves or denies the temporary license holder's application for a license. The board shall issue a license under this Act to the holder of a temporary license under this section if:

(1) the temporary license holder passes the examination required by Section 3.05 of this Act;

(2) the board verifies that the temporary license holder has satisfied the academic and experience requirements for a license under this Act; and

(3) the temporary license holder has satisfied any other license requirements under this Act.

(d) The board must assemble the documents and information necessary to process a temporary license holder's application for a license not later than the 90th day after the date the temporary license is issued and complete the processing of the application not later than the 90th day after the date the documents and information are assembled. If by the 180th day after the date the temporary license is issued the board has not completed the processing of the application, the board shall review the application to determine the cause of the delay.

SECTION 13. Section 3.04, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.04. QUALIFICATION OF LICENSEE. (a) An applicant, to be eligible for the examination and issuance of a license, must present satisfactory proof to the board that the applicant:

(1) is at least 21 years of age;

(2) is of good professional character;

(3) has completed 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas for credit on a bachelor of arts degree or a bachelor of science degree; and

(4) is a graduate of an acceptable [a] medical school or college that was approved by the board at the time the degree was conferred[;] and

has completed a one-year program of graduate medical training approved by the board.

(b) The [~~(5) has successfully completed a one year program of graduate medical training approved by the board. In addition to other licensure requirements, the board may require by rule and regulation that graduates of medical schools located outside the United States and Canada comply with other requirements that the board considers appropriate, including but not limited to additional graduate medical training in the United States, except those who qualify for licensure in Section 5.04 of this Act. However, the~~] applicant shall be eligible for examination prior to complying with the graduate training requirement of Subsection (a)(4) [~~Subdivision (5) of Subsection (a)~~] of this section but shall not be eligible for the issuance of an unrestricted license until the requirements of Subsection (a) of this section [~~this subsection~~] have been satisfied.

(c) [~~(b)~~] Applications for examination must be made in writing, verified by affidavit, filed with the board on forms prescribed by the board, and accompanied by documents and a fee as the board determines to be reasonable.

(d) To be recognized by the board for the purposes of this subchapter, all allopathic or osteopathic medical education instruction taught in the United States must be accredited by an accrediting body officially recognized by the United States Department of Education and the Council on Postsecondary Accreditation as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States.

(e) The requirements for eligibility for licensure of a graduate of an unapproved foreign medical school are set out in Section 5.035 of this Act, and the requirements for eligibility for licensure of a person who has completed all of the didactic work of a foreign medical school but has not graduated from the school (Fifth Pathway Program) are set out in Section 5.04 of this Act.

SECTION 14. Sections 3.05(a), (c), and (e), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) All examinations for license to practice medicine shall be conducted in writing in the English language and in a manner as to be entirely fair and impartial to all individuals and to every school or system of medicine. [~~All applicants shall be known to the examiners only by numbers, without names or other method of identification on examination papers by which members of the board may be able to identify the applicants or examinees, until after the general averages of the examinees' numbers in the class have been determined and license granted or refused.~~] Examinations shall be conducted on and cover those subjects generally taught by medical schools, a knowledge of which is commonly and generally required of candidates for the degree of doctor of medicine or doctor of osteopathy conferred by schools or colleges of medicine approved by the board, and the examinations shall also be conducted on and cover the subject of medical jurisprudence. Examinations shall be prepared by

a national testing service or prepared by the board and validated by qualified independent testing professionals. On satisfactory examination conducted as required by this Act under rules of the board, applicants may [~~shall~~] be granted licenses to practice medicine. All questions and answers, with the grades attached, shall be preserved for one year in the executive office of the board or such other repository as the board by rule may direct. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the board. The board in its discretion may give the examination for license in two or more parts.

(c) All applicants for license to practice medicine in this state not otherwise licensed under the provisions of law must successfully pass a uniform [~~an~~] examination approved by the board as determined by rule. The board is authorized to adopt and enforce all rules of procedure not inconsistent with statutory requirements. All applicants shall be given due notice of the date and place of the examination[~~; provided that the partial examinations provided for in this Act shall not be disturbed by this section~~]. If any applicant, because of failure to pass the required examination, is refused a license, the applicant, at a time as the board may fix, shall be permitted to take a subsequent examination not more than two additional times [~~upon any subjects required in the original examination~~] as the board may prescribe on the payment of a fee as the board may determine to be reasonable. In the event satisfactory grades shall be made on the subjects prescribed and taken on the reexamination, the board may grant the applicant a license to practice medicine. The board shall determine the credit to be given examinees on answers turned in on the subjects of complete and partial examination, and its decision is final.

(e) Within 90 [~~30~~] days after the day on which an examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 30th day [~~within four weeks~~] after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination, the board shall notify the examinee of the reason for the delay before the 90th day.

SECTION 15. Section 3.06(d)(5), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Paragraph (G) to read as follows:

(G) An advertisement for a site serving a medically underserved population shall include the name and business address of the supervising physician for the site.

SECTION 16. Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Subsections (g) and (h) to read as follows:

(g) This Act does not prohibit a nonprofit clinic that is operated by a nonprofit hospital or organization and that primarily serves a financially indigent population from:

(1) contracting with a physician to provide services at the clinic;

(2) paying a physician a minimum guarantee to assure the physician's availability;

(3) billing to and collecting from patients as the physician's agent the physician's professional fees; or

(4) retaining any professional fees collected under Subdivision (3) of this subsection up to the amount of the minimum guarantee fee and a reasonable collection fee.

(h) In Subsection (g), "financially indigent population" means persons meeting Medicaid eligibility requirements or uninsured persons who are accepted for care with no obligation to pay or with a discounted obligation to pay for services rendered based on the clinic's eligibility system.

SECTION 17. Section 3.08, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.08. GROUNDS FOR REFUSAL TO ADMIT PERSONS TO EXAMINATION AND TO ISSUE LICENSE AND RENEWAL LICENSE And For Disciplinary Action. The board may refuse to admit persons to its examinations and to issue a license to practice medicine to any person and may take disciplinary action against any person for any of the following reasons:

(1) submission of a false or misleading statement, document, or certificate to the board in an application for examination or licensure; the presentation to the board of any license, certificate, or diploma that was illegally or fraudulently obtained; the practice of fraud or deception in taking or passing an examination;

(2) conviction of a crime of the grade of a felony or a crime of a lesser degree that involves moral turpitude;

(3) intemperate use of alcohol or drugs that, in the opinion of the board, could endanger the lives of patients;

(4) unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public. Unprofessional or dishonorable conduct likely to deceive or defraud the public includes but is not limited to the following acts:

(A) committing any act that is in violation of the laws of the State of Texas if the act is connected with the physician's practice of medicine. A complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this provision. Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine is sufficient for action by the board under this section;

(B) failing to keep complete and accurate records of purchases and disposals of drugs listed in Chapter 481, Health and Safety Code, or of controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513). A physician shall keep records of his purchases and disposals of these drugs to include without limitation the date of purchase, the sale or disposal of the drugs by the physician, the name and address of the person receiving the drugs, and the reason for the disposing or dispensing of the drugs to the person. A failure to keep the records for a reasonable time is grounds for revoking, canceling, suspending, or probating the license of any practitioner of medicine. The

board or its representative may enter and inspect a physician's place(s) of practice during reasonable business hours for the purpose of verifying the correctness of these records and of taking inventory of the prescription drugs on hand;

(C) writing prescriptions for or dispensing to a person known to be an abuser [~~a habitual user~~] of narcotic drugs, controlled substances, or dangerous drugs or to a person who the physician should have known was an abuser [~~a habitual user~~] of the narcotic drugs, controlled substances, or dangerous drugs. This provision does not apply to those persons:

(i) being treated by the physician for their narcotic use after the physician notifies the board in writing of the name and address of the person being so treated; or

(ii) who the physician is treating for intractable pain under the Intractable Pain Treatment Act (Article 4495c, Revised Statutes) and its subsequent amendments;

(D) writing false or fictitious prescriptions for dangerous drugs as defined by Chapter 483, Health and Safety Code, of controlled substances scheduled in the Texas Controlled Substances Act (Chapter 481, Health and Safety Code) [~~(Article 4476-15, Vernon's Texas Civil Statutes)~~], or of controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513);

(E) prescribing or administering a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed;

(F) prescribing, administering, or dispensing in a manner not consistent with public health and welfare dangerous drugs as defined by Chapter 483, Health and Safety Code, controlled substances scheduled in the Texas Controlled Substances Act (Chapter 481, Health and Safety Code) [~~(Article 4476-15, Vernon's Texas Civil Statutes)~~], or controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513);

(G) persistently or [~~and~~] flagrantly overcharging or overtreating patients;

(H) failing to supervise adequately the activities of those acting under the supervision of the physician; or

(I) delegating professional medical responsibility or acts to a person if the delegating physician knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts;

(5) violation or attempted violation, direct or indirect, of any valid rules issued under this Act, either as a principal, accessory, or accomplice;

(6) use of any advertising statement that is false, misleading, or deceptive;

(7) advertising professional superiority or the performance of professional service in a superior manner if the advertising is not readily subject to verification;

(8) purchase, sale, barter, or use or any offer to purchase, sell, barter, or use any medical degree, license, certificate, diploma, or transcript of license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;

(9) altering, with fraudulent intent, any medical license, certificate, diploma, or transcript of a medical license, certificate, or diploma;

(10) using any medical license, certificate, diploma, or transcript of a medical license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

(11) impersonating or acting as proxy for another in any examination required by this Act for a medical license; or engaging in conduct which subverts or attempts to subvert any examination process required by this Act for a medical license. Conduct which subverts or attempts to subvert the medical licensing examination process includes, but is not limited to:

(A) conduct which violates the security of the examination materials, as prescribed by board rules;

(B) conduct which violates the standard of test administration, as prescribed by board rules; or

(C) conduct which violates the accreditation process, as prescribed by board rules;

(12) impersonating a licensed practitioner or permitting or allowing another to use his license or certificate to practice medicine in this state for the purpose of diagnosing, treating, or offering to treat sick, injured, or afflicted human beings;

(13) employing, directly or indirectly, any person whose license to practice medicine has been suspended, canceled, or revoked or association in the practice of medicine with any person or persons whose license to practice medicine has been suspended, canceled, or revoked or any person who has been convicted of the unlawful practice of medicine in Texas or elsewhere;

(14) performing or procuring a criminal abortion or aiding or abetting in the procuring of a criminal abortion or attempting to perform or procure a criminal abortion or attempting to aid or abet the performance or procurement of a criminal abortion;

(15) aiding or abetting, directly or indirectly, the practice of medicine by any person, partnership, association, or corporation not duly licensed to practice medicine by the board;

(16) inability to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this subdivision the board shall, upon probable cause, request a physician to submit to a mental or physical examination by physicians designated by the board. If the physician refuses to submit to the examination, the board shall issue an order requiring the physician to show cause why he should not be required to submit to the examination and shall schedule a hearing on the order within 30 days after notice is served on the physician. The physician shall be notified by either personal service or certified mail with return receipt

requested. At the hearing, the physician and his attorney are entitled to present any testimony and other evidence to show why the physician should not be required to submit to the examination. After a complete hearing, the board shall issue an order either requiring the physician to submit to the examination or withdrawing the request for examination. An appeal from the decision of the board shall be taken under the Administrative Procedure Act;

(17) judgment by a court of competent jurisdiction that a person licensed to practice medicine is of unsound mind;

(18) professional failure to practice medicine in an acceptable manner consistent with public health and welfare;

(19) being removed, suspended, or having disciplinary action taken by his peers in any professional medical association or society, whether the association or society is local, regional, state, or national in scope, or being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if that action in the opinion of the board was based on unprofessional conduct or professional incompetence that was likely to harm the public, provided that the board finds that the actions were appropriate and reasonably supported by evidence submitted to it. The action does not constitute state action on the part of the association, society, or hospital medical staff;

(20) repeated or recurring meritorious health-care liability claims that in the opinion of the board evidence professional incompetence likely to injure the public; or

(21) suspension, revocation, [~~or~~] restriction, or other disciplinary action by another state of a license to practice medicine, or disciplinary action by the uniformed services of the United States, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of the state taking the action is conclusive evidence of it.

SECTION 18. The Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) is amended by adding Section 3.085 to read as follows:

Sec. 3.085. RESTRICTIONS ON BIDDING AND ADVERTISING. (a) The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

SECTION 19. Sections 3.10(b), (c), (d), and (e), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) [~~The board may not set, charge, collect, receive, or deposit any of the following fees in excess of:~~

[~~(1) for processing and granting a license by reciprocity to a licensee of another state ..... $700~~

[~~(2) for processing an application and administration of a partial examination for licensure ..... $700~~

[~~(3) for processing an application and administration of a complete examination for licensure ..... $700~~

[~~(4) for processing an application and issuance of a temporary license ..... $200~~

[~~(5) for processing an application and issuance of a duplicate license ..... $200~~

[~~(6) for processing an application and issuance of a license of reinstatement after a lapse or cancellation of a license ..... $700~~

[~~(7) for processing an application and issuance of an annual registration of a licensee ..... $200~~

[~~(8) for processing and issuance of an institutional permit for interns, residents, and others in approved medical training programs ..... $200~~

[~~(9) for processing an application and issuance of an endorsement to other state medical boards ..... $200~~

[~~(10) for processing and issuance of a permit to a physician who supervises a physician assistant ..... $200~~

[~~(11) for processing and issuance of a permit to a physician who supervises an acupuncturist ..... $200.~~

[~~(c)~~] The board may set and collect a sales charge for making copies of any paper of record in the office of the board and for any printed material published by the board. The charges shall be in amounts considered sufficient to reimburse the board for the actual expense.

(c) [~~(d)~~] The financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(d) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act [~~(c) On or before the first day of January each year, the board shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year~~].

SECTION 20. Section 3.11A, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.11A. Disposition of [~~Increase in~~] FEES. (a) This section applies to each [~~Each~~] of the following fees [~~imposed by or under another section of this Act is increased by $200~~]:

(1) fee for processing and granting a license by reciprocity to a licensee of another state;

(2) fee for processing an application and administration of a partial examination for licensure;

(3) fee for processing an application and administration of a complete examination for licensure;

(4) fee for processing an application and issuance of a license of reinstatement after a lapse or cancellation of a license; and

(5) fee for processing an application and issuance of an annual registration of a licensee.

(b) Of each fee [~~increase~~] collected, $50 shall be deposited to the credit of the foundation school fund and $150 shall be deposited to the credit of the general revenue fund. This subsection applies to the disposition of the stated portion of each fee [~~increase~~] regardless of any other provision of law providing for a different disposition of funds.

SECTION 21. Section 4.01, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.01. GROUNDS FOR CANCELLATION, REVOCATION, SUSPENSION, AND PROBATION OF LICENSE. (a) The board shall, except for good cause shown, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this Act or a rule of the board [~~Except as provided herein, the board may cancel, revoke, or suspend the license of any practitioner of medicine or impose any other authorized means of discipline upon proof of the violation of this Act in any respect~~] or for any cause for which the board is authorized to refuse to admit persons to its examination and to issue a license and renewal license, including an initial conviction or the initial finding of the trier of fact of guilt of a felony or misdemeanor involving moral turpitude.

(b) On proof that a practitioner of medicine has been initially convicted of a felony or the initial finding of the trier of fact of guilt of a felony under Chapter 481, Health and Safety Code, Section 485.033, Health and Safety Code, Chapter 483, Health and Safety Code, or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), the board shall suspend the practitioner's license. On the practitioner's final conviction for such a felony offense, the board shall revoke the practitioner's license.

(c) The board shall suspend the license of a practitioner who is serving a prison term in a state or federal penitentiary during his incarceration regardless of the offense.

SECTION 22. Section 4.04, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is redesignated as Section 4.02 and amended to read as follows:

Sec. 4.02 [~~4.04~~]. COMPLAINT; INVESTIGATION. (a) Any person, including a partnership, association, corporation, or other entity, may file a complaint against a licensee with the board, or the board may file a complaint on its own initiative. The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(b) The board shall keep an information file about each complaint filed with the board. The board's information file shall be kept current and contain a record for each complaint of:

(1) potential witnesses contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(c) If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an investigation.

(d) The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.

(e) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

(f) Except as otherwise provided by this section, all investigations shall be conducted by the board or persons authorized by the board to conduct them. The board may commission investigators as peace officers for the purpose of enforcing this Act. However, investigators of the board so commissioned as peace officers may not carry a firearm or exercise arrest powers. Each complaint against a physician which requires a determination of medical competency shall be reviewed by a board member, consultant, or employee with medical background considered sufficient by the board.

(g) [~~(b)~~] Unless it would jeopardize an investigation, the board shall notify the physician that a complaint has been filed and the nature of the complaint. The board shall make a preliminary investigation of the complaint. The first consideration of the board shall be whether the physician constitutes a continuing threat to the public welfare.

(h) The board may, unless precluded by the law or this Act, make a disposition of any complaint or matter relating to this Act, or of any contested case by stipulation, agreed settlement, or consent order. The board shall dispose of a complaint, contested case, or other matter in writing, and if appropriate, the physician shall sign the writing. An agreed disposition is a disciplinary order for purposes of reporting under this Act

and of administrative hearings and proceedings by state and federal regulatory agencies regarding the practice of medicine. An agreed disposition is a public record.

(i) In civil litigation, an agreed disposition is a settlement agreement under Rule 408, Texas Rules of Civil Evidence. This subsection does not apply to a licensee who has previously entered into an agreed disposition with the board of a different disciplinary matter or whose license the board is seeking to revoke.

(j) The board shall adopt such rules as are appropriate to carry out this section [~~such disposition. Such disposition shall be considered a disciplinary order~~].

(k) The board shall dispose of all complaints in a timely manner. The board shall establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file, and all parties to the complaint must be notified not later than the 14th day after the date the change is made unless the notice would jeopardize an investigation.

(l) The executive director of the board shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

(m) Except in the case of a suspension under Section 4.13 of this Act or in accordance with the terms of an agreement between the board and a licensee, no revocation, suspension, involuntary modification, or disciplinary action relating to a license is effective unless, before board proceedings are instituted:

(1) the board has served notice, in a manner consistent with the requirements for service under Subsection (g) of this section, to the physician of the facts or conduct alleged to warrant the intended action; and

(2) the physician was given an opportunity to show compliance with all requirements of law for the retention of the license either in writing or through personal appearance at an informal meeting with one or more representatives of the board, at the option of the licensee.

(n) If the licensee exercises the option to personally appear at an informal meeting with one or more representatives of the board and the informal meeting is held, the staff of the board and the representatives of the board shall be subject to the ex parte provisions of the Administrative Procedure Act with regard to contacts with board members and administrative law judges concerning the case.

SECTION 23. The Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) is amended by adding Section 4.025 to read as follows:

Sec. 4.025. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 13(e), Administrative Procedure Act, and its subsequent amendments; and

(2) informal proceedings held in compliance with Section 18(c), Administrative Procedure Act, and its subsequent amendments.

(b) Rules adopted under this section must provide the complainant and the licensee an opportunity to be heard and must require the presence of the board's legal counsel or a representative of the office of the attorney general to advise the board or board's employees. The rules shall provide that the staff of the board at the meeting shall present to the representative of the board the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing. The physician is entitled to reply to the staff's presentation and present the facts the physician reasonably believes the physician could prove by competent evidence or qualified witnesses at a hearing. After ample time is given for the presentations, the representative of the board shall recommend that the investigation be closed or attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under the provisions of applicable law concerning contested cases.

SECTION 24. Section 4.02, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is redesignated as Section 4.03 and amended to read as follows:

Sec. 4.03 [~~4.02~~]. INITIATION OF CHARGES. (a) Proceedings, unless otherwise specified, under this Act or other applicable law and charges against a licensee may be instituted by a duly authorized representative of the board [~~on its own initiative or by any person~~]. Charges must be in writing and on sworn affidavit filed with the records custodian or assistant records custodian of the board detailing the nature of the charges as required by this Act or other applicable law. The president or an authorized [~~his~~] designee shall [~~set a time and place for a hearing and shall~~] cause a copy of the charges[~~, together with a notice of the time and place fixed for the hearing~~] to be served on the respondent or the respondent's counsel of record.

(b) The president or designee shall notify the State Office of Administrative Hearings of a formal complaint.

(c) A formal complaint shall be in writing and shall allege with reasonable certainty the specific act or acts relied on by the agency to constitute a violation of a specific statute or rule. The formal complaint shall be specific enough to enable a person of common understanding to know what is meant by the formal complaint and shall contain a degree of certainty that will give the person who is the subject of the formal complaint notice of the particular act or acts alleged to be a violation of a specific statute or rule.

(d) The board shall adopt reasonable rules to promote discovery by all parties to contested cases.

(e) In this section, "formal complaint" means a written statement made by a credible person under oath that is filed and presented by a representative of the board charging a person with having committed an act

or acts that if proven could affect the legal rights or privileges of a licensee or other person under the jurisdiction of the board.

SECTION 25. Section 4.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is redesignated as Section 4.04 and amended to read as follows:

Sec. 4.04 [~~4.03~~]. NOTICE. (a) Service of process notifying the respondent of [~~the time and place of~~] a hearing about [~~and the nature of~~] the charges against the person shall be made in accordance with the requirements of the Administrative Procedure Act and its subsequent amendments [~~person or by mail. Notice shall be sufficient if made in person or if sent by registered or certified mail to the person charged at the address shown in the board files or on his most recent application for registration or renewal, no later than 10 days before the hearing~~].

(b) If service of notice as prescribed by Subsection (a) of this section is impossible or cannot be effected, the board shall cause to be published once a week for two successive weeks a notice of the hearing in a newspaper published in the county of the last known place of practice in Texas of the person, if known. If the licensee is not currently practicing in Texas as evidenced by information in the board files, or if the last county of practice is unknown, publication shall be in a newspaper in Travis County. When publication of notice is used, the date of hearing may not be less than 10 days after the date of the last publication of notice.

SECTION 26. Section 4.05, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.05. HEARINGS, RULES. (a) The [~~president of the~~] board by rule shall adopt procedures governing formal disposition of a contested case under the Administrative Procedure Act and its subsequent amendments. A formal hearing shall be conducted by an administrative law judge employed by the State Office of Administrative Hearings [~~designate one of the following alternative procedures for the conduct of each individual contested case in a disciplinary matter:~~

[~~(1) a hearing before the board itself where a quorum of the board shall be present for the hearing and decision at the conclusion of the hearing;~~

[~~(2) a hearing committee appointed by the president of the board, provided that the hearing committee shall be composed of not less than three members of the board and the composition of such committee shall be consistent with the provisions of Sections 2.08 and 2.09 of this Act; or~~

[~~(3) a hearing before a hearing examiner appointed by the board to conduct a hearing and to prepare and submit to the board for action a proposal for decision as provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).~~

[~~Any individual conducting a hearing under this subchapter is empowered to administer oaths and to receive evidence at the hearing and shall report the hearing as prescribed by board rules~~]. Notwithstanding any other provision of this Act or other law, the board may, in its sole discretion, employ, retain, and compensate such attorneys, consultants, and other professionals as it deems necessary and appropriate to serve as

[~~hearing examiners,~~] board consultants or[~~,~~] special counsel to prosecute on behalf of the hearings division and investigating division such complaints as are filed with the board, court reporters, and other staff deemed necessary or appropriate by the board to prepare for or represent the board in [~~conduct~~] the hearings authorized by this section. [~~All hearings conducted under this subchapter by the board shall comply with the provisions of the Administrative Procedure Act and the board's rules.~~]

(b) [~~The licensee shall have the right to produce witnesses or evidence on the person's behalf, to cross-examine witnesses, and to have subpoenas issued by the board to be served at the licensee's expense.~~

[~~(c)~~] The board shall, after receiving the administrative law judge's findings of fact and conclusions of law [~~the hearing~~], determine the charges upon their merits.

(c) [~~(d)~~] All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, received or gathered by the board or its employees or agents relating to a licensee, an application for license, or a criminal investigation or proceedings are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline. Not later than 30 days after receiving a written request from a licensee who is the subject of a formal complaint initiated and filed under Section 4.03 of this Act or from the licensee's counsel of record and subject to any other privileges or restrictions set forth by rule, statute, or legal precedent, and unless good cause is shown for delay, the board shall provide the licensee with access to all information in its possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint. However, the board is not required to provide board investigative reports or investigative memoranda, the identity of nontestifying complainants, attorney-client communications, attorney-work product, or other materials covered by a privilege as recognized by the Texas Rules of Civil Procedure or the Texas Rules of Civil Evidence. The furnishing of information shall not constitute a waiver of privilege or confidentiality under this section, this Act, or other applicable law. Investigative [~~However, investigative~~] information in the possession of the board or its employees or agents which relates to licensee discipline may be disclosed to the appropriate licensing authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license, or to a peer review committee reviewing an application for privileges or the qualifications of the licensee with respect to retaining privileges. If the investigative information in the possession of the board or its employees or agents indicates a crime may have been committed, the information shall be reported to the proper law enforcement agency. The board shall cooperate and assist all law enforcement agencies conducting criminal investigations of licensees by providing information which is relevant to the criminal investigation to the investigating agency. Any information disclosed by the board to an investigative agency shall remain confidential and shall not be disclosed by the investigating agency except as necessary to further the

investigation. The board shall provide information upon the written request of a health-care entity about a complaint filed against a licensee that was resolved after investigation by a disciplinary order of the board or by an agreed settlement and the basis of and current status of any complaint under active investigation. The board shall keep information on file about each complaint filed with the board, consistent with this Act. If a written complaint is filed with the board relating to a person licensed by the board, the board, at least as often as quarterly and until final determination of the action to be taken relative to the complaint, shall notify the parties to the complaint [~~complaining party~~] consistent with this Act of the status of the complaint unless the notice would jeopardize an active investigation.

(d) [~~(c)~~] The board in its discretion may accept the voluntary surrender of a license. No license may be returned unless the board determines, under rules established by it, that the licensee is competent to resume practice.

SECTION 27. Section 4.10, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.10. PETITION FOR REINSTATEMENT. (a) Upon application, the board may reissue a license to practice medicine to a person whose license has been canceled, revoked, or suspended, but the application, in the case of revocation, may not be made prior to one year after the revocation was issued or became final and if denied by the board may not be brought more frequently than annually and must be made upon payment of the fees as established by the board and in the manner and form and under the conditions as the board may require. Further, the board may not reinstate or reissue a license to a person whose license has been canceled, revoked, or suspended because of a felony conviction under Chapter 481, Health and Safety Code, Section 485.033, Health and Safety Code, Chapter 483, Health and Safety Code, or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been canceled, revoked, or suspended.

(b) In addition to the requirements of Subsection (a) of this section, to be eligible for reinstatement or reissuance of a license, an applicant must prove that it is in the best interests of the public and of the person whose license has been canceled, revoked, or suspended to reinstate or reissue the license.

(c) A decision by the board to deny an application to reinstate or reissue a license is subject to judicial review in the manner provided by Section 4.09 of this Act.

SECTION 28. Section 4.11, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.11. Monitoring of License Holder; PROBATION. (a) The board by rule shall develop a system for monitoring the compliance with the requirements of this Act of license holders who are the subject of disciplinary action. Rules adopted under this section shall include

procedures for monitoring a license holder who is ordered by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who are the subject of disciplinary action and who present a continuing threat to the public welfare through the practice of medicine.

(b) The board upon majority vote may provide that the order canceling, revoking, or suspending a license or imposing any other method of discipline be probated so long as the probationer conforms to the orders, conditions, and rules that the board may set out as the terms of probation. However, the board may not grant probation to a person whose license has been canceled, revoked, or suspended because of a felony conviction under Chapter 481, Health and Safety Code, Section 485.033, Health and Safety Code, Chapter 483, Health and Safety Code, or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), except on an express determination, based on substantial evidence, that the grant of probation is in the best interests of the public and of the person whose license has been suspended, revoked, or canceled. The board, at the time of probation, shall set out the period of time that constitutes the probationary period. The board may not grant probation to a physician who poses, through the practice of medicine, a continuing threat to the public welfare.

(c) [~~(b)~~] The board may at any time while a license holder [~~the probationer~~] remains on probation, with adequate grounds being shown, cause [~~hold~~] a hearing to be held and, upon proof of a violation of the order [~~majority vote~~], rescind the probation and enforce the board's original action and may impose any disciplinary action permitted under Section 4.12 of this Act in addition to or in lieu of enforcing the original order. The board [~~and~~] shall revoke or suspend a probationer's license [~~do so~~] if the board determines that the probationer poses, through the practice of medicine, a continuing threat to the public welfare.

(d) [~~(c)~~] The hearing to rescind the probation shall be governed by the same provisions as are set forth in this subchapter for other charges.

SECTION 29. Section 4.12, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.12. METHODS OF DISCIPLINE. (a) Except as otherwise provided in Section 4.01, if the board finds any person to have committed any of the acts set forth in Section 3.08 of this Act, it shall enter an order imposing one or more of the following:

(1) deny the person's application for a license or other authorization to practice medicine;

(2) administer a public reprimand;

(3) suspend, limit, or restrict the person's license or other authorization to practice medicine, including limiting the practice of the person to or by the exclusion of one or more specified activities of medicine or stipulating periodic board review;

(4) revoke the person's license or other authorization to practice medicine;

(5) require the person to submit to care, counseling, or treatment of physicians designated by the board as a condition for the initial,

continued, or renewal of a license or other authorization to practice medicine;

(6) require the person to participate in a program of education or counseling prescribed by the board;

(7) require the person to practice under the direction of a physician designated by the board for a specified period of time; [~~or~~]

(8) require the person to perform public service considered appropriate by the board; or

(9) assess an administrative penalty against the person as provided by Section 4.125 of this Act.

(b) Providing however, if the board determines that, through the practice of medicine, the physician poses a continuing threat to the public welfare, it shall revoke, suspend or deny the license.

(c) In addition to the other disciplinary actions authorized by this section, the board may issue a written reprimand to a license holder who violates this Act or require that a license holder who violates this Act participate in continuing education programs. The board shall specify the continuing education programs that may be attended and the number of hours that must be completed by an individual license holder to fulfill the requirements of this subsection.

(d) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(e) The schedule of sanctions adopted by the board by rule shall be used by the State Office of Administrative Hearings for any sanction imposed as the result of a hearing conducted by that office.

SECTION 30. The Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) is amended by adding Section 4.125 to read as follows:

Sec. 4.125. ADMINISTRATIVE PENALTY. (a) The board by order may impose an administrative penalty against a person licensed or regulated under this Act who violates this Act or a rule or order adopted under this Act.

(b) The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The board by rule shall prescribe the procedure by which it may impose an administrative penalty.

(e) All proceedings under this section are subject to the Administrative Procedure Act and its subsequent amendments.

(f) If the board by order finds that a violation has occurred and imposes an administrative penalty, the board shall give notice to the person of the board's order. The notice must include a statement of the right of the person to judicial review of the order.

(g) Within 30 days after the date the board's order imposing the penalty is final as provided by Section 16(c), Administrative Procedure Act, and its subsequent amendments, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(h) Within the 30-day period, a person who acts under Subsection (g)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(i) An executive director who receives a copy of an affidavit under Subsection (h)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(j) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.

(k) If on appeal the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(l) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(m) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

SECTION 31. The Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) is amended by adding Section 4.126 to read as follows:

Sec. 4.126. CIVIL PENALTY. (a) If it appears that a person is in violation of or is threatening to violate this Act or a rule or order adopted by the board, the attorney general may institute an action for a civil penalty of $1,000 for each violation. Each day of a violation shall constitute a separate violation.

(b) A civil action filed under this section by the attorney general must be filed in a district court in Travis County or the county in which the violation occurred.

(c) The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

(d) A civil penalty recovered in an action by the attorney general under this section shall be deposited in the general revenue fund.

(e) The attorney general may not institute an action for a civil penalty against a person described by Section 3.06(c) or (e) of this Act if the person is not in violation of or threatening to violate this Act or a rule or order adopted by the board.

SECTION 32. Section 4.13, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.13. TEMPORARY SUSPENSION OF LICENSE. (a) The president of the board, with the approval of the board, shall appoint a three-member disciplinary panel consisting of members of the board for the purpose of determining whether a person's license to practice medicine in this state should be temporarily suspended under this section.

(b) If the disciplinary panel [~~executive committee of the board~~] determines from the evidence or information presented to it that a person

licensed to practice medicine in this state by his continuation in practice would constitute a continuing threat to the public welfare, the disciplinary panel [~~executive committee of the board~~] shall temporarily suspend the license of that person.

(c) The license may be suspended under this section without notice or hearing on the complaint, provided institution of proceedings for a hearing before the board is initiated simultaneously with the temporary suspension and provided that a hearing is held as soon as can be accomplished under the Administrative Procedure Act and this Act.

(d) Notwithstanding the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the disciplinary panel is inconvenient for any member of the disciplinary panel.

SECTION 33. Subchapter E, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Section 5.035 to read as follows:

Sec. 5.035. GRADUATES OF UNAPPROVED FOREIGN MEDICAL SCHOOLS. (a) An applicant who is a graduate of a medical school that is located outside the United States and Canada and that was not approved by the board at the time the degree was conferred, to be eligible for the issuance of a license, must present satisfactory proof to the board that the applicant:

(1) meets the requirements set out in Sections 3.04(a)(1), (2), and (3) of this Act;

(2) is a graduate of a school whose curriculum meets the requirements for an unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board;

(3) has successfully completed three years of graduate medical training in the United States or Canada that was approved by the board on the date the training was completed;

(4) is eligible for licensure to practice medicine in the country in which the school is located;

(5) possesses a valid certificate issued by the Educational Commission for Foreign Medical Graduates;

(6) has the ability to communicate in the English language; and

(7) has passed the examination required by the board of all applicants for license as required by Section 3.05 of this Act.

(b) In addition to other licensure requirements, the board may require by rule that a graduate of an unapproved medical school located outside the United States and Canada or the school of which the person is a graduate provide additional information to the board concerning the school before approving the applicant.

(c) The board may refuse to issue a license to an applicant who graduated from an unapproved medical school located outside the United States and Canada if it finds that the applicant does not possess the

requisite qualifications to provide the same standard of medical care as provided by a physician licensed in this state.

(d) The board may refuse to issue a license to an applicant who graduated from an unapproved medical school located outside the United States and Canada if the applicant fails to provide the board evidence to establish that the applicant completed medical education or professional training substantially equivalent to that provided by a medical school in this state.

SECTION 34. Section 5.04, Medical Practice Act, is amended to read as follows:

Sec. 5.04. FIFTH PATHWAY FOR FOREIGN MEDICAL SCHOOL STUDENTS. (a) An applicant [~~Notwithstanding any other provision of law, an individual~~] who has been a student of a foreign medical school, to be eligible for the issuance of a license, must present satisfactory proof to the board that the applicant [~~is eligible for licensure to practice medicine in this state if he~~]:

(1) meets the requirements set out in Sections 3.04(a)(1), (2), and (3) of this Act;

(2) has studied medicine in an acceptable [~~a reputable~~] medical school as defined by the board located outside the United States and Canada;

(3) [~~(2)~~] has completed all of the didactic work of the foreign medical school but has not graduated from the school;

(4) [~~(3)~~] has attained a score satisfactory to a medical school in the United States approved by the Liaison Committee on Medical Education on a qualifying examination and has satisfactorily completed one academic year of supervised clinical training for foreign medical students as defined by the American Medical Association Council on Medical Education (Fifth Pathway Program) under the direction of the medical school in the United States;

(5) [~~(4)~~] has attained a passing score on the Educational Commission [~~Council~~] for Foreign Medical Graduates examination, or other examination, if required by the board; [~~and~~]

(6) has successfully completed three years of graduate medical training in the United States or Canada that was approved by the board on the date the training was completed; and

(7) [~~(5)~~] has passed the examination required by the board of all applicants for license as required by Section 3.05 of this Act.

(b) Satisfaction of the requirements of Subsection (a) of this section are in lieu of the completion of any requirements of the foreign medical school beyond completion of the didactic work, and no other medical education requirements shall be a condition of licensure to practice medicine in this state.

(c) Satisfaction of the requirements specified in Subsection (a) of this section shall be in lieu of certification by the Educational Commission [~~Council~~] for Foreign Medical Graduates, and the certification is not a condition of licensure to practice medicine in this state for candidates who have completed the requirements of Subsection (a) of this section.

(d) A hospital that is licensed by this state, that is operated by the state or a political subdivision of the state, or that receives state financial assistance, directly or indirectly, may not require an individual who has been a student of a foreign medical school but has not graduated from the school to satisfy any requirements other than those contained in [~~Subdivisions (1), (2), (3), and (4) of~~] Subsection (a) of this section prior to commencing an internship or residency.

(e) A document granted by a medical school located outside the United States issued after the completion of all the didactic work of the foreign medical school shall, on certification by the medical school in the United States in which the training was received of satisfactory completion by the person to whom the document was issued of the requirements listed in Subdivision (4) [~~(3)~~] of Subsection (a) of this section, be considered the equivalent of a degree of doctor of medicine or doctor of osteopathy for purposes of licensure.

SECTION 35. Section 5.08, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by amending Subsections (d) and (k) and adding Subsection (n) to read as follows:

(d) The prohibitions of this section continue to apply to confidential communications or records concerning any patient irrespective of when the patient received the services of a physician, except for medical records 100 years old or older requested for historical purposes.

(k) A physician shall furnish copies of medical records requested, or a summary or narrative of the records, pursuant to a written consent for release of the information as provided by Subsection (j) of this section, except if the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, and the physician may delete confidential information about another person who has not consented to the release. The information shall be furnished by the physician within 30 days after the date of receipt of the request [~~a reasonable period of time~~] and reasonable fees for furnishing the information shall be paid by the patient or someone on his behalf. If the physician denies the request, in whole or in part, the physician shall furnish the patient a written statement, signed and dated, stating the reason for the denial. A copy of the statement denying the request shall be placed in the patient's medical records. In this subsection, "medical records" means any records pertaining to the history, diagnosis, treatment, or prognosis of the patient.

(n) A person who may provide a copy of a record or a summary of the record to another under this section may provide the copy, summary, or narrative:

(1) on paper; or

(2) on microfilm, microfiche, computer hard disk, magnetic tape, optical disk, or by means of another appropriate medium, including a machine-readable medium, if the person who is to provide and the person who is to receive the copy, summary, or narrative agree to a form authorized by this subdivision.

SECTION 36. Section 5.10, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.10. SUNSET PROVISION. The Texas State Board of Medical Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2005 [~~1993~~].

SECTION 37. The Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. ACUPUNCTURE PRACTICE

Sec. 6.01. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that:

(1) the review and establishment of statewide standards for the training, education, and discipline of persons performing acupuncture are in the public interest; and

(2) the health, safety, and welfare of the people of this state are best served by an orderly system of regulating the practice of acupuncture.

Sec. 6.02. DEFINITIONS. In this subchapter:

(1) "Acupuncture" means:

(A) the insertion of an acupuncture needle and the application of moxibustion to specific areas of the human body as a primary mode of therapy to treat and mitigate a human condition; and

(B) the administration of thermal or electrical treatments or the recommendation of dietary guidelines, energy flow exercise, or dietary or herbal supplements in conjunction with the treatment described by Paragraph (A) of this subdivision.

(2) "Acupuncturist" means a person who practices acupuncture.

(3) "Acupuncture board" means the Texas State Board of Acupuncture Examiners.

(4) "Chiropractor" means a licensee of the Texas Board of Chiropractic Examiners.

(5) "Executive director" means the executive director of the Texas State Board of Medical Examiners.

(6) "Medical board" means the Texas State Board of Medical Examiners.

(7) "Physician" means a licensee of the Texas State Board of Medical Examiners.

Sec. 6.03. EXEMPTION; LIMITATION. (a) This subchapter does not apply to a health care professional licensed under another subchapter of this Act or another statute of this state and acting within the scope of the license.

(b) This subchapter does not:

(1) limit the practice of medicine by a physician or permit the unauthorized practice of medicine; or

(2) permit a person to dispense, administer, or supply any controlled substance, narcotic, or dangerous drug if the person is not otherwise authorized by law to do so.

Sec. 6.04. ACUPUNCTURE BOARD. (a) The Texas State Board of Acupuncture Examiners is composed of nine members appointed by the governor as follows:

(1) four acupuncturists who have at least five years of experience in the practice of acupuncture in this state and are not licensed in this state as physicians;

(2) two physicians who are licensed in this state and are experienced in the practice of acupuncture; and

(3) three members of the general public who are not licensed or trained in a health care profession and who represent the public.

(b) The following persons may not serve on the acupuncture board:

(1) a person who is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments; and

(2) a person who is currently employed by or serving as president, vice-president, secretary, or treasurer of a statewide or national organization incorporated for the purpose of representing a health care profession in this state or the United States.

(c) Members of the acupuncture board hold office for staggered terms of six years, with three members' terms expiring January 31 of each odd-numbered year.

(d) The governor shall designate a presiding officer of the acupuncture board from the members of the acupuncture board.

(e) A vacancy on the acupuncture board shall be filled by appointment of the governor.

(f) A member of the acupuncture board may not receive compensation for service on the board but is entitled to receive a per diem as set by legislative appropriation for transportation and related expenses incurred for each day that the member engages in the business of the board.

(g) The acupuncture board is subject to the open meetings law, the open records law, and the Administrative Procedure Act and any subsequent amendments.

(h) The acupuncture board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subchapter expires September 1, 1997.

Sec. 6.05. POWERS AND DUTIES OF ACUPUNCTURE BOARD. (a) Subject to the advice and approval of the medical board, the acupuncture board shall:

(1) establish qualifications for an acupuncturist to practice in this state;

(2) establish minimum educational and training requirements necessary for the acupuncture board to recommend that the medical board issue a license to practice acupuncture;

(3) administer an examination that is validated by independent testing professionals for a license to practice acupuncture;

(4) develop requirements for licensure by endorsement of other states;

(5) prescribe the application form for a license to practice acupuncture;

(6) make recommendations on applications for licenses to practice acupuncture;

(7) establish a procedure for reporting and processing complaints relating to the practice of acupuncture under this article;

(8) establish the requirements for a tutorial program for students who have completed at least 48 semester hours of college; and

(9) recommend additional rules as are necessary for the administration and enforcement of this subchapter.

(b) Notwithstanding Subsection (a) of this section, the acupuncture board has no independent rulemaking authority.

Sec. 6.06. LICENSE REQUIRED. A person may not practice acupuncture in this state unless the person holds a license to practice acupuncture issued by the medical board under this subchapter.

Sec. 6.07. QUALIFICATIONS OF ACUPUNCTURISTS. (a) An applicant for a license to practice acupuncture who is not otherwise licensed under this subchapter must pass an examination approved by the acupuncture board.

(b) To be eligible for the examination, an applicant must:

(1) be at least 21 years of age;

(2) have completed at least 48 semester hours of college courses, including basic science courses as determined by the advisory board; and

(3) be a graduate of an acceptable acupuncture school whose entrance requirements and course of instruction meet standards set by the acupuncture board.

(c) A reputable acupuncture school must:

(1) maintain a resident course of instruction equivalent to not less than six terms of four months each for a total of not less than 1,800 instructional hours;

(2) provide supervised patient treatment for at least two terms of the resident course of instruction;

(3) maintain a course of instruction in anatomy-histology, bacteriology, physiology, symptomatology, pathology, meridian and point locations, hygiene, and public health; and

(4) have the necessary teaching force and facilities for proper instruction in required subjects.

(d) In establishing standards for the entrance requirements and course of instruction of an acupuncture school, the acupuncture board may consider the standards set by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

(e) The examination shall be conducted on practical and theoretical acupuncture and other subjects required by the acupuncture board.

(f) An application for examination must be:

(1) in writing on a form prescribed by the acupuncture board;

(2) verified by affidavit;

(3) filed with the executive director of the medical board; and

(4) accompanied by a fee set by the medical board.

(g) The medical board shall notify all applicants of the time and place of the examination.

(h) The examination may be in writing, by a practical demonstration of the applicant's skill, or both, as the acupuncture board may require.

Sec. 6.08. ASSISTANCE BY MEDICAL BOARD. The medical board shall provide administrative and clerical employees as necessary to enable the acupuncture board to carry out this subchapter.

Sec. 6.09. FEES. (a) The medical board shall set and collect fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing this subchapter without the use of any other funds generated by the medical board.

(b) Fees collected by the medical board under this subchapter shall be deposited by the medical board in the state treasury to the credit of an account in the general revenue fund and may be expended to cover the costs of administering and enforcing this subchapter. At the end of each fiscal biennium, the comptroller shall transfer any surplus money remaining in the account to the general revenue fund.

Sec. 6.10. ISSUANCE OF LICENSE. (a) After consulting the acupuncture board, the medical board shall issue a license to practice acupuncture in this state to a person who meets the requirements of this subchapter and the rules adopted under this subchapter.

(b) The medical board shall by rule provide for the annual renewal of a license to practice acupuncture.

Sec. 6.11. DENIAL OF LICENSE; DISCIPLINE OF LICENSE HOLDER. (a) A license to practice acupuncture may be denied or, after notice and hearing, suspended, probated, or revoked if the applicant for a license or the holder of a license:

(1) uses drugs or intoxicating liquors to an extent that affects the person's professional competence;

(2) obtains or attempts to obtain a license by fraud or deception;

(3) is adjudged mentally incompetent by a court of competent jurisdiction;

(4) practices acupuncture in a manner detrimental to the public health and welfare;

(5) violates this subchapter or a rule adopted under this subchapter;

(6) is convicted of a felony or a crime involving moral turpitude; or

(7) holds himself out as a physician or surgeon or any combination or derivative of those terms unless the person is also licensed by the medical board as a physician or surgeon.

(b) Except as provided by Subsection (c) of this section, a license to practice acupuncture shall be denied or, after notice and hearing, revoked if the holder of a license has performed acupuncture on a person who was not evaluated by a physician or dentist, as appropriate, for the condition being treated within six months before the date acupuncture was performed.

(c) The holder of a license may perform acupuncture on a person who was referred by a doctor licensed to practice chiropractic by the Texas Board of Chiropractic Examiners if the licensee commences the treatment within 30 days of the date of the referral. The licensee shall refer the person to a physician after performing acupuncture 20 times or for 30

days, whichever occurs first, if no substantial improvement occurs in the person's condition for which the referral was made.

(d) The holder of a license must obtain reasonable documentation that the evaluation required by Subsection (b) of this section has taken place. If the licensee is unable to determine that an evaluation has taken place, the licensee must obtain a written statement signed by the person on a form prescribed by the acupuncture board that states that the person has been evaluated by a physician within the prescribed time frame. The form shall contain a clear statement that the person should be evaluated by a physician for the condition being treated by the licensee.

(e) The medical board with advice from the acupuncture board by rule may modify the requirement of the time frame or the scope of the evaluation under Subsection (b) of this section.

(f) The medical board with advice from the acupuncture board by rule may modify the requirement of the time frame for commencement of treatment after referral by a chiropractor or the number of treatments or days before referral to a physician is required under Subsection (c) of this section.

(g) Notwithstanding Subsections (b) and (c) of this section, an acupuncturist holding a current and valid license may without a referral from a physician, dentist, or chiropractor perform acupuncture on a person for smoking addiction, weight loss, or, as established by the medical board with advice from the acupuncture board by rule, substance abuse.

Sec. 6.12. OFFENSE. (a) A person commits an offense if the person violates Section 6.06 of this Act.

(b) An offense under Subsection (a) of this section is a Class A misdemeanor.

(c) Each day of a violation constitutes a separate offense.

Sec. 6.13. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The medical board, the attorney general, or a district or county attorney may bring a civil action to compel compliance with this subchapter or to enforce a rule adopted under this subchapter.

(b) In addition to injunctive relief or any other remedy provided by law, a person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty in an amount not to exceed $2,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a civil penalty. The attorney general, at the request of the medical board or on the attorney general's own initiative, may bring a civil action to collect a civil penalty under this subsection. A civil penalty recovered shall be deposited to the credit of the general revenue fund.

Sec. 6.14. AUTOMATIC LICENSURE. (a) With the approval of the medical board, the acupuncture board shall establish appropriate and reasonable requirements to determine those persons practicing acupuncture on the effective date of this subchapter who are eligible for immediate approval for a license to practice acupuncture under this section.

(b) This section only applies to a person who meets the requirements for immediate licensure under this section and who applies for immediate approval on or before June 1, 1994.

(c) This section expires June 2, 1994.

SECTION 38. Section 19(a), Texas Medical Physics Practice Act (Article 4512n, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The board may issue a license to practice medical physics in this state, without an examination, to a person who, before September 1, 1994, is a resident of this state and:

(1) has an earned bachelor's, master's, or doctoral degree from an accredited college or university that signifies the completion of courses approved by the board in physics, medical physics, biophysics, radiological physics, medical health physics, or nuclear engineering and demonstrated to the board's satisfaction the completion of at least two years of full-time work experience in the five years preceding January 1, 1993, [~~the effective date of this Act~~] in the medical physics specialty for which application is made; or

(2) has completed a training course approved by the board in physics, medical physics, biophysics, radiological physics, or medical health physics and demonstrated to the board's satisfaction the completion of at least 10 years of full-time work experience in the 12 years preceding January 1, 1993, [~~the effective date of this Act~~] in the medical physics specialty for which application is made.

SECTION 39. (a) As soon as possible on or after the effective date of this Act, the governor shall appoint three new public members to the Texas State Board of Medical Examiners to achieve the membership plan established by Section 2.05, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as amended by this Act. In making the appointments, the governor shall designate one new member for a term expiring April 13, 1995, one new member for a term expiring April 13, 1997, and one new member for a term expiring April 13, 1999.

(b) The changes in law made by this Act in the qualifications of, and the prohibitions applying to, members of the Texas State Board of Medical Examiners do not affect the entitlement of a member serving on the board immediately before the effective date of this Act to continue to carry out the functions of the board for the remainder of the member's term. The changes in law apply only to a member appointed on or after the effective date of this Act. This Act does not prohibit a person who is a member of the board on the effective date of this Act from being reappointed to the board if the person has the qualifications required for a member under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as amended by this Act.

(c) The changes in law made by this Act relating to an administrative penalty or civil penalty apply only to a violation of the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) or a rule or order adopted by the Texas State Board of Medical Examiners that occurs on or after the effective date of this Act. A violation occurs on or after the effective date of this Act only if each element of the violation occurs on or after that date. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

(d) A person is not required to obtain a license to practice acupuncture under Subchapter F, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as added by this Act, until June 1, 1994.

(e) The Texas State Board of Medical Examiners shall adopt rules under Subchapter F, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as added by this Act, not later than February 1, 1994.

(f) Not later than January 1, 1994, the governor shall make initial appointments to the Texas State Board of Acupuncture Examiners and shall designate three members for terms expiring January 31, 1995, three members for terms expiring January 31, 1997, and three members for terms expiring January 31, 1999.

(g) Notwithstanding other provisions of this Act, Sections 6.06 and 6.12 of the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), as added by this Act, take effect June 1, 1994.

SECTION 40. This Act takes effect September 1, 1993.

SECTION 41. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2043

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2043** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER	SAUNDERS
MONCRIEF	CHISUM
HALEY	EARLEY
BIVINS	KUEMPEL
WENTWORTH	TALTON
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1493

Senator Turner submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1493** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

TURNER	PLACE
SIBLEY	HIGHTOWER
WEST	TELFORD
WHITMIRE	S. TURNER
BROWN	GRAY
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 421

Senator Carriker submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 421** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

CARRIKER	COOK
TURNER	B. TURNER
LUCIO	WEST
	GOODMAN
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the rates of a gas utility.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (e), Section 3.05, Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) The railroad commission shall hear the appeal de novo based on the test year presented to the municipality, adjusted for known changes and conditions that are measurable with reasonable accuracy, and by its final order, which shall be entered not more than 210 [~~185~~] days from the date the appeal is perfected, the railroad commission shall fix such rates that the municipality should have fixed in the ordinance from which the appeal was taken. In the event that the railroad commission fails to enter its final order within 210 [~~185~~] days from the date the appeal is perfected, the schedule of rates proposed by the utility shall be deemed to have been approved by the commission and effective upon the expiration of the 210-day [~~185-day~~] period. Any rates, whether temporary or permanent, set by the railroad commission shall be prospective and observed from and after the applicable order of the railroad commission. However, [~~except~~] interim [~~rate~~] orders establishing temporary rates necessary to provide the utility the opportunity to avoid confiscation during the 210-day period may be made effective [~~beginning~~] on the date of filing of the [~~a~~] petition for review with the railroad commission [~~and ending on the date of a final order setting rates~~]. The railroad commission may order a refund with interest of amounts collected under temporary rates through a payment to customers from whom those amounts were collected or through a payment or credit to each affected class of customers.

SECTION 2. Section 5.06, Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.06. COMPONENTS OF NET INCOME. (a) The components of net income used to establish just and reasonable rates shall be determined in accordance with this section.

(b) "Net income" means the total revenues of the gas utility from gas utility service less all reasonable and necessary expenses related to that gas utility service as determined by the regulatory authority. The regulatory authority shall determine those expenses and revenues in a manner consistent with Subsections (c)-(e) [~~(b)-(d)~~] of this section.

(c) [~~(b)~~] Payment to affiliated interests for costs of any services, or any property, right, or thing, or for interest expense may not be used to establish just and reasonable rates for gas utility service [~~allowed~~] either as capital costs or as expense related to gas utility service except to the extent that the regulatory authority shall find such payment to be reasonable and necessary for each item or class of items as determined by the regulatory authority [~~railroad commission~~]. Any such finding shall include specific findings of the reasonableness and necessity of each item or class of items included in the establishment of the rates [~~allowed~~] and a finding that the price to the gas utility is no higher than prices charged

by the supplying affiliate to its other affiliates or divisions for the same item or class of items, or to unaffiliated persons or corporations.

(d) If an expense is allowed to be included in utility rates or an investment is included in the utility rate base, the related income tax deduction or benefit shall be included in the computation of income tax expense to reduce the rates. If an expense is disallowed or not included in utility rates or an investment is not included in the utility rate base, the related income tax deduction or benefit may not be included in the computation of income tax expense to reduce the rates. The income tax expense shall be computed using the statutory income tax rates. This subsection expires September 1, 1995.

(e) [~~(c) If the gas utility is a member of an affiliated group that is eligible to file a consolidated income tax return, and if it is advantageous to the gas utility to do so, income taxes shall be computed as though a consolidated return had been so filed and the utility had realized its fair share of the savings resulting from the consolidated return, unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns. The amounts of income taxes saved by a consolidated group of which a gas utility is a member by reason of the elimination in the consolidated return of the intercompany profit on purchases by the gas utility from an affiliate shall be applied to reduce the cost of the property or services so purchased. The investment tax credit allowed against federal income taxes, to the extent retained by the utility, shall be applied as a reduction in the rate based contribution of the assets to which the credit applies, to the extent and at the rate allowed by the Internal Revenue Code.~~

[~~(d)~~] The regulatory authority may promulgate reasonable rules and regulations complying with this section with respect to including and not including [~~the allowance or disallowance of~~] certain expenses in the computation of the rates to be established [~~for ratemaking purposes~~].

SECTION 3. Subsection (a), Section 5.08, Gas Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) No utility may increase its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed increase. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed increase, the effect the proposed increase is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and other information required by the regulatory authority's rules and regulations. A copy of the statement shall be mailed or delivered at the time of filing to the appropriate officer of each affected municipality. Notice[~~; and notice~~] shall also be given by publication of a notice to the public in conspicuous form and place [~~by placing a notice to the public of the proposed increase once in each week for four successive weeks~~] in a newspaper having general circulation in each county containing territory affected by the proposed increase. The notice shall be published for four successive weeks before the effective date of the proposed increase. In addition to

newspaper publication, the utility shall deliver notice of the proposed increase to all affected utility customers by mail or bill insert before the effective date of the proposed increase. Notice shall also be given by delivery of notice [~~and~~] to such other affected persons as required by the regulatory authority's rules and regulations. The [~~However, notwithstanding the above, instead of the~~] publication of newspaper notice is not required [~~contemplated above, a gas utility may provide notice to the public~~] in areas outside the limits of the municipalities[~~;~~] and within the limits of municipalities with a population of less than 2,500 according to the most recent federal census [~~by mailing such notice by United States mail, postage prepaid, to the billing address of each directly affected customer, or by including the notice in such customer's bill in a conspicuous form~~].

SECTION 4. Effective September 1, 1995, Section 5.06, Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), as amended by Section 2 of this Act, is amended to read as follows:

Sec. 5.06. COMPONENTS OF NET INCOME. (a) The components of net income used to establish just and reasonable rates shall be determined in accordance with this section.

(b) "Net income" means the total revenues of the gas utility from gas utility service less all reasonable and necessary expenses related to that gas utility service as determined by the regulatory authority. The regulatory authority shall determine those expenses and revenues in a manner consistent with Subsections (c)-(e) of this section.

(c) Payment to affiliated interests for costs of any services, or any property, right, or thing, or for interest expense may not be used to establish just and reasonable rates for gas utility service either as capital costs or as expense related to gas utility service except to the extent that the regulatory authority shall find such payment to be reasonable and necessary for each item or class of items as determined by the regulatory authority. Any such finding shall include specific findings of the reasonableness and necessity of each item or class of items included in the establishment of the rates and a finding that the price to the gas utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or class of items, or to unaffiliated persons or corporations.

(d) If the gas utility is a member of an affiliated group that is eligible to file a consolidated income tax return, and if it is advantageous to the gas utility to do so, income taxes shall be computed as though a consolidated return had been so filed and the utility had realized its fair share of the savings resulting from the consolidated return, unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns. The amounts of income taxes saved by a consolidated group of which a gas utility is a member by reason of the elimination in the consolidated return of the intercompany profit on purchases by the gas utility from an affiliate shall be applied to reduce the cost of the property or services so purchased. The investment tax credit allowed against federal income taxes, to the extent retained by the utility, shall be applied as a reduction in the rate-based contribution of the assets

to which the credit applies, to the extent and at the rate allowed by the Internal Revenue Code.

(e) The regulatory authority may promulgate reasonable rules and regulations complying with this section with respect to including and not including certain expenses in the computation of the rates to be established.

SECTION 5. The changes made by Section 2 of this Act to Section 5.06, Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), apply only to a rate proceeding for which the statement of intent is filed on or after the effective date of this Act. A rate proceeding for which the statement of intent was filed before the effective date of this Act is governed by Section 5.06, Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), as it existed when the statement of intent was filed, and that law is continued in effect for that purpose.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2711

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2711** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

BARRIENTOS	JOHNSON
MONTFORD	MARCHANT
WEST	PATTERSON
RATLIFF	DEAR
ROSSON	BLACK
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1051

Senator Parker submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1051** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

PARKER	SAUNDERS
SHELLEY	ECKELS
CARRIKER	HIGHTOWER
HARRIS OF DALLAS	CHISUM
	TALTON
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the reduction of solid waste by creating markets for recycled materials and otherwise promoting recycling and the use of recycled materials and by municipal solid waste management.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. RECYCLING

SECTION 1.01. Chapter 481, Government Code, is amended by adding Subchapter AA to read as follows:

SUBCHAPTER AA. RECYCLING MARKET DEVELOPMENT

Sec. 481.371. PURPOSE. The purpose of this subchapter is to develop and diversify the economy of this state and develop and expand commerce in this state through sustaining and promoting recycling enterprises.

Sec. 481.372. DEFINITIONS. In this subchapter, "enterprise zone" and "governing body" have the meanings assigned by the Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes).

Sec. 481.373. DESIGNATION AS RECYCLING MARKET DEVELOPMENT ZONE. On application by the governing body of an enterprise zone, the department may designate the enterprise zone as a recycling market development zone for the development of local business and industry in the zone to recycle materials that have served their intended use or that are scrapped, discarded, used, surplus, or obsolete by collecting, separating, or processing the materials for use in the production of new products.

Sec. 481.374. RECYCLING MARKET DEVELOPMENT LOANS AND GRANTS. (a) The department may make a loan or grant to the governing body of an enterprise zone designated as a recycling market development zone to fund an activity that sustains or increases recycling efforts.

(b) A grant recipient under this section must match the amount of the state grant with an equal amount of money from another source.

(c) A grant under this section may not exceed $30,000.

(d) The department may make loans or grants from appropriated funds or from any special fund.

Sec. 481.375. RULEMAKING. The department shall adopt necessary rules to implement and administer this subchapter in accordance with the purposes of this subchapter, including rules on:

(1) criteria for designating a recycling market development zone;

(2) designation applications, loan applications, and grant applications;

(3) the minimum and maximum amount of a loan made under this subchapter;

(4) application fees; and

(5) operational guidelines for loan and grant disbursement.

SECTION 1.02. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.33 to read as follows:

Sec. 3.33. STATE AGENCY EXPENDITURES FOR RECYCLED MATERIALS. A state agency shall expend a minimum of five percent of its consumable procurement budget in fiscal year 1994 and eight percent of its consumable procurement budget for each fiscal year thereafter for materials, supplies, and equipment that have recycled material content or are remanufactured or environmentally sensitive, as those terms are defined by the commission. A report of the total expenditures in these areas and the amount expended in each category for the previous fiscal year shall be delivered to the governor, the Legislative Budget Board, the lieutenant governor, and the speaker of the house of representatives not later than January 1 of each year.

SECTION 1.03. Article 11, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 11.07 to read as follows:

Sec. 11.07. INTERSTATE COMPACTS AND COOPERATIVE AGREEMENTS FOR PROCUREMENT OF RECYCLED PRODUCTS. The commission shall enter into compacts and cooperative agreements with other states and government entities for the procurement of products made of recycled materials.

SECTION 1.04. Section 382.002, Local Government Code, is amended to read as follows:

Sec. 382.002. PURPOSE. The primary purpose of this chapter is to create county research and development authorities to promote scientific research and development and commercialization of research in affiliation with public and private institutions of research, higher education, or health science centers. Research to be promoted, developed, and commercialized includes research in recycling processes and recyclable materials.

SECTION 1.05. Subsection (a), Section 481.078, Government Code, is amended to read as follows:

(a) The department may develop and plan programs for the purpose of promoting and encouraging the location and expansion of major industrial, [~~and~~] manufacturing, and recycling enterprises within this state and may coordinate, with the consent of local governments, the activities of the local governments related to the programs, including financing options available under existing law and this section for that purpose.

SECTION 1.06. Subdivision (10), Section 2, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(10) "Project" shall mean the land, buildings, equipment, facilities, and improvements (one or more) found by the board of directors to be required or suitable for the promotion of development and expansion of manufacturing and industrial facilities, transportation facilities (including but not limited to airports, ports, mass commuting facilities, and parking facilities), sewage or solid waste disposal facilities, recycling facilities, air or water pollution control facilities, facilities for the furnishing of water to the general public, distribution centers, small warehouse facilities capable of serving as decentralized storage and distribution centers, and facilities which are related to any of the foregoing, and in furtherance of the public purposes of this Act, all as defined in the rules of the department, irrespective of whether in existence or required to be identified, acquired, or constructed thereafter. As used in this Act, the term "development areas" shall mean any area or areas of a city that the city finds and determines, after a public hearing, should be developed in order to meet the development objectives of the city. In addition, in blighted or economically depressed areas, development areas or federally assisted new communities located within a home-rule city or a federally designated economically depressed county of less than 50,000 persons according to the last federal decennial census, a project may include the land, buildings, equipment, facilities, and improvements (one or more) found by the board of directors to be required or suitable for the promotion of commercial development and expansion and in furtherance of the public purposes of this Act, or for use by commercial enterprises, all as defined in the rules of the department, irrespective of whether in existence or required to be acquired or constructed thereafter. As used in this Act, the term blighted or economically depressed areas shall mean those areas and areas immediately adjacent thereto within a city which by reason of the presence of a substantial number of substandard, slum, deteriorated, or deteriorating structures, or which suffer from a high relative rate of unemployment, or which have been designated and included in a tax incremental district created under Chapter 695, Acts of the 66th Legislature, Regular Session, 1979 (Article 1066d, Vernon's Texas Civil Statutes), or any combination of the foregoing, the city finds and determines, after a hearing, substantially impair or arrest the sound growth of the city, or constitute an economic or social liability and are a menace to the public health, safety, or welfare in their present condition and use. The department shall adopt guidelines that describe the kinds of areas that

may be considered to be blighted or economically depressed. The city shall consider these guidelines in making its findings and determinations. Notice of the hearing at which the city considers establishment of a development area or an economically depressed or blighted area shall be posted at the city hall before the hearing.

"Federally assisted new communities" shall mean those federally assisted areas which have received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act and a portion of the federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974, as amended.

SECTION 1.07. Subdivision (2), Subsection (a), Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) "Project" means land, buildings, equipment, facilities, and improvements included in the definition of that term under Section 2 of this Act, including recycling facilities, and land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for use for professional and amateur (including children's) sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, learning centers, parks and park facilities, open space improvements, municipal buildings, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of those items.

SECTION 1.08. Section 361.013, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (f) and (g) to read as follows:

(a) Except as provided by Subsection (e), the department shall charge a fee on solid waste that is disposed of within this state. The fee is $1.25 [~~the greater of 50 cents~~] per ton received for disposal at a landfill if the solid waste is measured by weight. If the solid waste is measured by volume, the fee [~~or,~~] for compacted solid waste is 40[~~, 50~~] cents per cubic yard or, for uncompacted solid waste, 25 [~~10~~] cents per cubic yard received for disposal at a landfill. The department shall set the fee for sludge or similar waste applied to the land for beneficial use on a dry weight basis and for solid waste received at an incinerator or a shredding and composting facility at half the fee set for solid waste received for disposal at a landfill. The department may charge comparable fees for other means of solid waste disposal that are used.

(f) The department may not charge a fee under Subsection (a) for source separated yard waste materials that are composted at a composting facility, including a composting facility located at a permitted landfill site. The department shall credit any fee payment due under Subsection (a) for any material received and converted to compost or product for composting through a composting process. Any compost or product for composting

that is not used as compost and is deposited in a landfill is not exempt from the fee.

(g) The department shall allow a home-rule municipality that has enacted an ordinance imposing a local environmental protection fee for disposal services as of January 1, 1993, to offer disposal or environmental programs or services to persons within its jurisdiction, from the revenues generated by said fee, as such services are required by state or federal mandates. If such services or programs are offered, the home-rule municipality may require their use by those persons within its jurisdiction.

SECTION 1.09. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0135 to read as follows:

Sec. 361.0135. COMPOSTING REFUND. (a) The operator of a public or privately owned municipal solid waste facility is entitled to a refund of 15 percent of the solid waste fees collected by the facility under Section 361.013(a) if:

(1) the refunds are used to lease or purchase and operate equipment necessary to compost yard waste;

(2) composting operations are actually performed; and

(3) the finished compost material produced by the facility is returned to beneficial reuse.

(b) The amount of the refund authorized by this section increases to 20 percent of the solid waste fees collected by the facility if, in addition to composting the yard waste, the operator of the facility voluntarily bans the disposal of yard waste at the facility.

(c) In order to receive a refund authorized by this section, the operator of the facility must submit a composting plan to the commission. The commission by rule may set a fee for reviewing a composting plan in an amount not to exceed the costs of review.

(d) The operator is entitled to a refund of fees collected by the facility under Section 361.013(a) on or after the date on which the commission approves the composting plan. The refund is collectable beginning on the date that the first composting operations occur in accordance with the approved plan. The commission may allow the refund to be applied as a credit against fees required to be collected by the facility under Section 361.013(a).

(e) In this section, the terms "compost," "composting," and "yard waste" have the meanings assigned by Section 361.421.

(f) This section expires September 1, 1999, if the commission on or before that date determines that a market in composting materials has developed sufficiently to ensure that composting activities will continue without the incentives provided by this section.

SECTION 1.10. Section 361.014, Health and Safety Code, is amended to read as follows:

Sec. 361.014. USE OF SOLID WASTE FEE REVENUE. Revenue received by the commission [~~department~~] under Section 361.013 shall be deposited in the state treasury to the credit of the commission [~~department~~]. At least half the revenue is dedicated to the commission's [~~department's~~] municipal solid waste permitting and enforcement programs and related support activities, and the balance of the revenue is dedicated

to pay for activities that will enhance the state's solid waste management program, including:

(1) provision of funds for the municipal solid waste management planning fund and the municipal solid waste resource recovery applied research and technical assistance fund established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363);

(2) conduct of demonstration projects and studies to help local governments of various populations and the private sector to convert to accounting systems and set rates that reflect the full costs of providing waste management services and are proportionate to the amount of waste generated;

(3) provision of technical assistance to local governments concerning solid waste management;

(4) [~~(3)~~] establishment of a solid waste resource center in the department and an office of waste minimization and recycling;

(5) [~~(4)~~] provision of supplemental funding to local governments for the enforcement of this chapter, the Texas Litter Abatement Act (Chapter 365), and Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes);

(6) [~~(5)~~] conduct of a statewide public awareness program concerning solid waste management;

(7) [~~(6)~~] provision of supplemental funds for other state agencies with responsibilities concerning solid waste management, recycling, and other initiatives with the purpose of diverting recyclable waste from landfills;

(8) [~~(7)~~] conduct of research to promote the development and stimulation of markets for recycled waste products;

(9) [~~(8)~~] creation of a state municipal solid waste superfund for:

(A) the cleanup of unauthorized tire dumps and solid waste dumps for which a responsible party cannot be located or is not immediately financially able to provide the cleanup; and

(B) the cleanup or proper closure of abandoned or contaminated municipal solid waste sites for which a responsible party is not immediately financially able to provide the cleanup; [~~and~~]

(10) provision of funds to mitigate the economic and environmental impacts of lead-acid battery recycling on local governments;

(11) provision of funds for the conduct of research by a public or private entity to assist the state in developing new technologies and methods to reduce the amount of municipal waste disposed of in landfills; and

(12) [~~(9)~~] provision of funds for other programs that the commission [~~board of health~~] may consider appropriate to further the purposes of this chapter.

SECTION 1.11. Subdivision (5), Section 361.421, Health and Safety Code, is amended to read as follows:

(5) "Recyclable material" means material that has been recovered or diverted from the non-hazardous solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is

consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

SECTION 1.12. Section 361.423, Health and Safety Code, is amended to read as follows:

Sec. 361.423. RECYCLING MARKET DEVELOPMENT BOARD [~~STUDY~~] AND IMPLEMENTATION PROGRAM. (a) The commissioner of the General Land Office[~~, in cooperation with the department~~], the chairman of the Texas Water Commission, the executive director of the General Services [~~Railroad~~] Commission [~~of Texas~~], and the executive director of the Texas Department of Commerce[~~,~~] shall constitute the Recycling Market Development Board. The commissioner of the General Land Office serves as presiding officer of the Recycling Market Development Board for the first year, and after that year the members of the Recycling Market Development Board shall, in the order listed in this subsection, rotate as the presiding officer for terms of one year. The Recycling Market Development Board may designate chief executives of additional agencies as members of the board if it identifies the agencies as agencies needed to assist the board in performing its duties as outlined in Subsection (b). The Recycling Market Development Board shall provide support to and coordinate the recycling activities of member agencies and shall pursue [~~initiate, coordinate, and conduct a comprehensive market development study that quantifies the potential benefits and costs of recycling in order to provide the groundwork for~~] an economic development strategy that focuses on the state's waste management priorities established by Section 361.022 and that includes development of recycling industries and markets as an integrated component.

(b) The Recycling Market Development Board, on an ongoing basis, [~~study~~] shall:

(1) identify existing economic and regulatory incentives and disincentives for creating an optimal market development strategy;

(2) analyze the market development implications of:

(A) the state's waste management policies and regulations;

(B) existing and potential markets for plastic, glass, paper, lead-acid batteries, tires, compost, scrap gypsum, coal combustion by-products, and other recyclable materials; and

(C) the state's tax structure and overall economic base;

(3) examine and make policy recommendations regarding the need for changes in or the development of:

(A) economic policies that affect transportation, such as those embodied in freight rate schedules;

(B) tax incentives and disincentives;

(C) the availability of financial capital including grants, loans, and venture capital;

(D) enterprise zones;

(E) managerial and technical assistance;

(F) job-training programs;

(G) strategies for matching market supply and market demand for recyclable materials, including intrastate and interstate coordination;

(H) the state recycling goal;

(I) public-private partnerships;

(J) research and development;

(K) government procurement policies;

(L) educational programs for the public, corporate and regulated communities, and government entities; and

(M) public health and safety regulatory policies; [~~and~~]

(4) establish a comprehensive statewide strategy to expand markets for recycled products in Texas;

(5) provide information and technical assistance to small and disadvantaged businesses, business development centers, chambers of commerce, educational institutions, and nonprofit associations on market opportunities in the area of recycling; and

(6) with the cooperation of the Office of State-Federal Relations, assist communities and private entities in identifying state and federal grants pertaining to recycling and solid waste management.

(c) In carrying out this section [~~preparing the study~~], the responsible agencies may obtain research and development and technical assistance from the Hazardous Waste Research Center at Lamar University at Beaumont or other similar institutions.

(d) The General Land Office shall provide ongoing research and assistance to the Recycling Market Development Board in carrying out its responsibilities [~~develop and carry out a program designed to implement the comprehensive statewide strategy established pursuant to Subsection (b)(4)~~].

SECTION 1.13. Section 361.428, Health and Safety Code, is amended to read as follows:

Sec. 361.428. COMPOSTING PROGRAM. (a) [~~The Municipal Solid Waste Management and Resource Recovery Advisory Council of the department shall develop recommendations for the 73rd Legislature regarding the development of a state composting program. In developing these recommendations, the council shall, at a minimum, consider:~~

[~~(1) the development of local yard waste separation programs;~~

[~~(2) the commercial application of composting activities;~~

[~~(3) the potential beneficial uses of compost; and~~

[~~(4) the necessary changes to existing law and regulations required to facilitate conversion of yard waste to compost.~~

[~~(b)~~] The commission [~~department~~] shall put in place incentives for a composting program that is capable of achieving at least a 15 percent reduction in the amount of the municipal solid waste stream that is disposed of in landfills by January 1, 1994.

(b) The commission shall adopt rules establishing minimum standards and guidelines for the issuance of permits for processes or facilities that produce compost that is the product of material from the typical mixed solid waste stream generated by residential, institutional, commercial, or

industrial sources. A reduction in the mixed solid waste stream that occurs as a result of the beneficial reuse of compost produced by a facility permitted under this subsection shall be used in achieving the goal established under Section 361.422. The minimum standards must include end-product standards and a definition of beneficial reuse. The commission shall consider regulations issued by the United States Environmental Protection Agency in developing minimum standards. Beneficial reuse does not include landfilling or the use of compost as daily landfill cover.

(c) A composting facility may not accept mixed municipal solid waste from a governmental unit for composting purposes at that facility unless residents have reasonable access to household hazardous waste collection and source-separated recycling programs in the area. The commission shall establish standards for household hazardous waste collection programs and source-separated recycling programs that qualify under this section.

SECTION 1.14. Section 361.452, Health and Safety Code, is amended to read as follows:

Sec. 361.452. COLLECTION FOR RECYCLING. A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in this state shall:

(1) accept from each customer [~~customers~~], if offered, at least one but not more than three [~~the point of transfer, used~~] lead-acid batteries for recycling [~~of the type and in a quantity at least equal to the number of new batteries purchased~~]; and

(2) post written notice, which must be at least 8-1/2 inches by 11 inches in size, containing the universal recycling symbol and the following language:

(A) "It is illegal to discard or improperly dispose of a motor-vehicle battery or other lead-acid battery.";

(B) "Recycle your used batteries."; and

(C) "State law requires us to accept used motor-vehicle batteries or other lead-acid batteries for recycling [~~in exchange for new batteries purchased~~]."

SECTION 1.15. Section 361.454, Health and Safety Code, is amended to read as follows:

Sec. 361.454. LEAD-ACID BATTERY WHOLESALERS. Any person selling new lead-acid batteries at wholesale shall accept from customers, at the point of transfer, used lead-acid batteries for recycling [~~of the type and in a quantity at least equal to the number of new batteries purchased~~], if offered by customers. A person accepting batteries in transfer from a battery retailer shall remove batteries from the retail point of collection within 90 days after acceptance.

SECTION 1.16. Section 63.071, Agriculture Code, is amended by adding Subsection (h) to read as follows:

(h) A person is not required to pay an inspection fee on compost as defined by Section 361.421, Health and Safety Code.

SECTION 1.17. Section 481.295, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The department and the advisory board may make a loan or a loan guarantee to the governing body of an enterprise zone designated as a recycling market development zone under Subchapter AA to fund an activity that sustains or increases recycling efforts.

SECTION 1.18. The Texas Natural Resource Conservation Commission shall adopt the rules required by Subsection (b), Section 361.428, Health and Safety Code, as added by this article, not later than six months after the effective date of this Act.

ARTICLE 2. MUNICIPAL SOLID WASTE MANAGEMENT

SECTION 2.01. The legislature finds that:

(1) the reduction of municipal solid waste by encouraging affordable alternatives to disposal is an important strategy in state-local waste management policy;

(2) improving all the municipal solid waste management techniques is necessary to achieve the goal of reducing the municipal solid waste stream;

(3) waste reduction efforts should focus on waste stream components that are highest in volume;

(4) a municipal solid waste infrastructure that encourages the reduction of waste through environmentally and economically sound waste management incentives and the use of source reduction, reuse, recycling, composting, and resource recovery processes should be developed;

(5) flexible and effective means of implementing and enforcing municipal solid waste laws should be provided;

(6) incentives for businesses to use recycled materials should be created; and

(7) the actual cost of municipal solid waste disposal should be imposed by municipalities on those that place municipal solid waste in the solid waste stream in order to pay for infrastructure development and to encourage waste reduction from landfills.

SECTION 2.02. Subsections (a), (b), (d), (e), and (f), Section 361.020, Health and Safety Code, are amended to read as follows:

(a) The commission [~~department~~] shall develop a strategic state solid waste plan for all solid waste under its jurisdiction. The commission shall develop a strategic [~~state solid waste~~] plan for the reduction of solid waste [~~under its jurisdiction. The state agencies shall coordinate the solid waste plans developed~~].

(b) A strategic plan shall[~~, for the kinds of waste under the jurisdiction of the agency preparing the plan,~~] identify both short-term and long-term waste management problems, set short-term objectives as steps toward meeting long-term goals, and recommend specific actions to be taken within stated [~~state~~] times designed to address the identified problems and to achieve the stated objectives and goals. A plan shall reflect the state's preferred waste management methods as stated in Section 361.022 or 361.023 [~~for the kinds of waste under the jurisdiction of the agency preparing the plan~~]. A strategic plan shall describe the total estimated generation of solid waste in the state over a five-year and a 10-year period and shall list existing and proposed solid waste management facilities to manage that waste.

(d) The commission in developing a comprehensive statewide [~~Each agency in preparing its~~] strategic plan shall:

(1) consult with:

(A) [~~(1)~~] the agency's waste minimization, recycling, or reduction division;

(B) the municipal solid waste management and resource recovery advisory council;

(C) [~~(2)~~] the waste reduction advisory committee; [~~and~~]

(D) [~~(3)~~] the interagency coordinating council; and

(E) local governments, appropriate regional and state agencies, businesses, citizen groups, and private waste management firms;

(2) hold public hearings in different regions of the state; and

(3) publish the proposed plan in the Texas Register.

(e) A strategic plan shall be updated every two years. The commission [~~Each agency~~] continually shall collect and analyze data for use in its next updated plan and systematically shall monitor progress toward achieving existing plan objectives and goals. In preparing its updated plan, an agency shall examine previously and newly identified waste management problems, reevaluate its plan objectives and goals, and review and update its planning documents.

(f) Before the [~~department or the~~] commission adopts its strategic plan or makes significant amendments to the plan, the Texas Air Control Board must have the opportunity to comment and make recommendations on the proposed plan or amendments and shall be given such reasonable time to do so as specified by the agency.

SECTION 2.03. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0201 to read as follows:

Sec. 361.0201. COMPREHENSIVE MUNICIPAL SOLID WASTE MANAGEMENT STRATEGIC PLAN. (a) The comprehensive municipal solid waste management strategic plan developed under Section 361.020 shall identify the components of the municipal solid waste stream that are highest in volume and shall set priorities according to those findings.

(b) The plan shall:

(1) describe the capacity in the state to manage municipal waste through existing treatment or disposal facilities and identify all existing municipal solid waste management facilities in the state, their capacity, and their projected remaining useful life; and

(2) analyze the state's capacity requirements over the planning periods specified in Section 361.020(c).

(c) The analysis of capacity requirements under Subsection (b) shall:

(1) examine the type and amount of each municipal solid waste stream that can reasonably be expected to be generated in the state or accepted from other states, using information on existing and past levels of waste and representative receipts from other states, and shall include information on the sources, characteristics, and current patterns of waste management of those waste streams; and

(2) estimate the amount of the total municipal solid waste identified under this subsection that is reasonably expected to be:

(A) recycled annually, according to previous rates and projected increases from those rates;

(B) transported annually to another state or imported into this state for treatment or other disposition according to previous rates and projected increases from those rates; and

(C) disposed of or incinerated annually within the state.

(d) The plan shall set a goal for overall reduction in the amount of municipal solid waste consistent with Section 361.422 using 1991 as the base year for computing the reduction. The commission may adjust this goal if it determines that it is not necessary given the state's disposal capacity, is not economically or technologically feasible, or is not feasible given the state's projected population growth.

(e) The plan shall ensure that source reduction, reuse, recycling, composting, and resource recovery are all addressed.

(f) The plan shall include a program of public education developed under Section 361.0202.

(g) The plan may not allow the commission to require a local government to perform any act not specifically required by state law or commission rule.

SECTION 2.04. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0202 to read as follows:

Sec. 361.0202. DEVELOPMENT OF EDUCATION PROGRAMS. (a) The commission shall develop a public awareness program to increase awareness of individual responsibility for properly reducing and disposing of municipal solid waste and to encourage participation in waste source reduction, composting, reuse, and recycling. The program shall include:

(1) a media campaign to develop and disseminate educational materials designed to establish broad public understanding and compliance with the state's waste reduction and recycling goals; and

(2) a curriculum, developed in cooperation with the commissioner of education and suitable for use in programs from kindergarten through high school, that promotes waste reduction and recycling.

(b) As part of the program, the commission may:

(1) advise and consult with individuals, businesses, and manufacturers on source reduction techniques and recycling; and

(2) sponsor or cosponsor with public and private organizations technical workshops and seminars on source reduction and recycling.

SECTION 2.05. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0219 to read as follows:

Sec. 361.0219. OFFICE OF WASTE EXCHANGE. (a) The office of waste exchange is an office of the commission.

(b) The office shall facilitate the exchange of solid waste, recyclable or compostable materials, and other secondary materials among persons that generate, recycle, compost, or reuse those materials, in order to foster greater recycling, composting, and reuse in the state. At least one party to such an exchange must be in the state. The office shall provide information to interested persons on arranging exchanges of these materials in order to allow greater recycling, composting, and reuse of the materials.

and may act as broker for exchanges of the materials if private brokers are not available.

(c) The office of waste exchange shall adopt a plan for providing to interested persons information on waste exchange and shall report to the legislature on the plan and on the state's participation in any regional or national waste exchange program. Annually the office of waste exchange shall report to the legislature on progress in implementing this section, including information on the movement and exchange of materials and the effect on recycling, composting, and reuse rates in the state.

SECTION 2.06. Section 361.024, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) Rules shall be adopted as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). As provided by that Act, the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency. The commission shall follow its own rules as adopted until it changes them in accordance with that Act.

SECTION 2.07. Subsection (a), Section 361.034, Health and Safety Code, is amended to read as follows:

(a) The commission shall submit a report to the presiding officers of the legislature and the governor not later than January 1 of each odd-numbered year. The report must include:

(1) a summary of a performance report of the imposed industrial solid waste and hazardous waste fees authorized under Subchapter D and related activities to determine the appropriateness of the fee structures;

(2) an evaluation of progress made in accomplishing the state's public policy concerning the preference of waste management methods under Section 361.023;

(3) projections of the volume of waste by type of waste, disposition of waste, and remaining capacity or capacity used for the treatment and disposal of the waste; [~~and~~]

(4) projections of the availability of adequate capacity in this state for the management of all types of hazardous waste generated within the state and a report of the amounts, types, and sources of hazardous waste imported into and exported from the state in the previous year;

(5) an evaluation of the progress made and activities engaged in consistent with the state's municipal solid waste management plan, in particular the progress toward meeting the waste reduction goal established by Section 361.0201(d);

(6) an evaluation of the progress made by local governments under the solid waste management plans;

(7) the status of state procurement under Section 361.426 of products made of recycled materials or that are reusable, including documentation of any decision not to purchase those products;

(8) the status of the governmental entity recycling program established under Section 361.425, including the status of collection and storage procedures and program evaluations required by that section;

(9) the status of the public education program described in Section 361.0202; and

(10) recommendations to the governor and to the legislature for improving the management of municipal solid waste in the state.

SECTION 2.08. Section 361.111, Health and Safety Code, is amended to read as follows:

Sec. 361.111. COMMISSION SHALL [~~DEPARTMENT MAY~~] EXEMPT CERTAIN MUNICIPAL SOLID WASTE MANAGEMENT FACILITIES. (a) The commission shall [~~department may~~] exempt from permit requirements a municipal solid waste management facility that[~~:~~

[~~(1)~~] is used in the transfer of municipal solid waste to a solid waste processing or disposal facility from:

(1) a municipality [~~service area~~] with a population of less than 50,000;

(2) a county with a population of less than 85,000;

(3) a facility used in the transfer of municipal solid waste that transfers or will transfer 125 tons a day or less; or

(4) a materials recovery facility that recycles for reuse more than 10 percent of its incoming nonsegregated waste stream if the remaining nonrecyclable waste is transferred to a permitted Type I landfill not farther than 50 miles from the materials recovery facility.

(b) The facility shall comply [~~5,000 to a solid waste processing or disposal site; and~~

[~~(2) complies~~] with design and operational requirements established by commission [~~board of health~~] rule that are necessary to protect the public's health and the environment.

(c) To qualify for an exemption under this section, an applicant must hold a public meeting about the siting of the facility in the municipality or county in which the facility is or will be located.

SECTION 2.09. Section 363.062, Health and Safety Code, is amended by adding a new Subsection (d) and relettering existing Subsections (d) and (e) to read as follows:

(d) In each even-numbered year on the anniversary of the adoption of a municipal solid waste management plan, each planning region shall report to the department on the progress of the region's municipal solid waste management program and recycling activities developed under this section. The department may not require a planning region to submit to the department information previously submitted to the department by the planning region in an earlier plan or report.

(e) If the department determines that a regional solid waste management plan does not conform to the requirements adopted by the board, the department shall give written notice to the planning region of each aspect of the plan that must be changed to conform to board requirements. After the changes have been made in the plan as provided by the department, the department shall submit the plan to the board for approval.

(f) [~~(e)~~] The board by rule shall adopt an approved regional solid waste management plan.

SECTION 2.10. Section 363.063, Health and Safety Code, is amended by adding a new Subsection (d) and relettering existing Subsections (d) and (e) to read as follows:

(d) In each even-numbered year on the anniversary of the adoption of a municipal solid waste management plan, each local government shall report to the department on the progress of its municipal solid waste management program and recycling activities implemented under this section. The department may not require a local government to submit to the planning region or to the department information previously submitted to the planning region or department by the local government in an earlier plan or report.

(e) If the department determines that a local solid waste management plan does not conform to the requirements adopted by the board, the department shall give written notice to the local government of each aspect of the plan that must be changed to conform to board requirements. After changes are made in the plan as requested by the department, the department shall submit the plan to the board for approval.

(f) [~~(c)~~] The board by rule shall adopt an approved local solid waste management plan.

SECTION 2.11. Section 363.064, Health and Safety Code, is amended to read as follows:

Sec. 363.064. CONTENTS OF REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN. A regional or local solid waste management plan must:

(1) include a description and an assessment of current efforts in the geographic area covered by the plan to minimize production of municipal solid waste, including sludge, and efforts to reuse or recycle waste;

(2) identify additional opportunities for waste minimization and waste reuse or recycling;

(3) include a description and assessment of existing or proposed community programs for the collection of household hazardous waste;

(4) make recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(5) encourage cooperative efforts between local governments and private industry in the siting of landfills for the disposal of solid waste;

(6) consider the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area; [~~and~~]

(7) allow a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction;[~~,~~]

(8) [~~(7)~~] establish recycling rate goals appropriate to the area covered by the plan; [~~and~~]

(9) [~~(8)~~] recommend composting programs for yard waste and related organic wastes that may include:

(A) creation and use of community composting centers;

(B) adoption of the "Don't Bag It" program for lawn clippings developed by the Texas Agricultural Extension Service; and

(C) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch;

(10) assess the need for new waste disposal capacity;

(11) include a public education program; and

(12) include waste reduction in accordance with the goal established under Section 361.0201(d), to the extent that funds are available.

SECTION 2.12. The office of waste exchange created by Section 361.0219, Health and Safety Code, as added by this article, shall adopt the plan required by that section not later than September 1, 1994.

SECTION 2.13. The change in law made by Section 361.024, Health and Safety Code, as amended by this article, applies to rules in effect on or adopted on or after the effective date of this Act.

ARTICLE 3. TIRE RECYCLING

SECTION 3.01. Sections 361.471 and 361.472, Health and Safety Code, are amended to read as follows:

Sec. 361.471. DEFINITIONS. In this subchapter:

(1) "Fund" means the waste tire recycling fund.

(2) "Green tire" means the casing form of a tire that has not been cured or does not have a tread or marking of any kind.

(3) "Manufacturer reject tire" means a tire rendered defective in the manufacturing process, whether the tire is determined to be defective before or after consumer purchase.

(4) "Mobile tire shredder" means equipment mounted on wheels or skid-mounted and hauled from place to place to split, shred, or quarter used or scrap tires.

(5) [~~(3)~~] "Scrap tire" has the meaning assigned by Section 361.112.

(6) [~~(4)~~] "Waste tire facility" means a facility registered [~~permitted~~] by the commission [~~department~~] under Section 361.477 [~~361.112~~] at which scrap tires are collected [~~or deposited~~] and shredded to facilitate the future extraction of useful materials for recycling, reuse, or energy recovery and are stored in a waste tire storage facility or a facility that recycles, reuses, or recovers the energy from the shredded tire pieces.

(7) [~~(5)~~] "Waste tire processor" means:

(A) a waste tire facility; or

(B) a mobile tire shredder that splits, shreds, or quarters tires and deposits the split, shredded, or quartered tires for eventual recycling, reuse, or energy recovery at:

(i) a waste tire storage facility registered by the commission [~~department~~] under Section 361.112; or

(ii) a waste tire facility.

(8) "Waste tire storage facility" means a facility registered by the commission under Section 361.477 at which whole used or scrap tires or shredded tire pieces are collected and stored to facilitate the future extraction of useful material for recycling, reuse, or recovery. The term

does not include a marine dock, rail yard, or trucking facility used to store tires that are awaiting shipment to a person for recycling, reuse, or energy recovery for 30 days or less.

(9) [~~(6)~~] "Waste tire transporter" means a person who collects and transports used or scrap tires or scrap tire pieces for storage or disposal.

(10) [~~(7)~~] "Weighed tire" means a unit of weight for shredded scrap tires that is equal to 18.7 pounds.

Sec. 361.472. WASTE TIRE RECYCLING FEES. (a) A wholesale or retail tire dealer who sells or offers to sell new tires not for resale shall collect at the time and place of sale a waste tire recycling fee [~~of $2~~] for each new [~~automobile, van, bus, truck, trailer, semitrailer, truck tractor and semitrailer combination, or recreational vehicle~~] tire sold as follows:

(1) $2 for each tire that has a rim diameter of [~~equal to or greater than~~] 12 inches but less than 17.5 [~~26~~] inches;

(2) $3.50 for each tire that has a rim diameter of 17.5 inches but less than 25 inches; and

(3) $2 for a motorcycle tire, regardless of the rim diameter.

(b) The sale of a tire as original equipment in the manufacture of a new vehicle is a sale for resale.

(c) A fee may not be assessed for a bicycle tire.

(d) [~~A dealer required to collect a fee under this section may retain 2 1/2 cents from each fee the dealer collects. A dealer shall account for amounts retained under this subsection in the manner prescribed by the comptroller.~~]

[~~(c)~~] A dealer required to collect a fee under this section:

(1) shall list as a separate item on an invoice a fee due under this section; and

(2) except as provided by Subsection (e) [~~(d)~~], on or before the 20th day of the month following the end of each calendar month and on a form and in the manner prescribed by the comptroller, shall file a report with and shall remit to the comptroller the amount of fees collected during the preceding calendar month.

(e) [~~(d)~~] A person required to collect a fee under this section who collects less than $50 for a calendar month or less than $150 for a calendar quarter is not required to file a monthly report but shall file a quarterly report with and make a quarterly remittance to the comptroller. The quarterly report and remittance shall include fees collected during the preceding calendar quarter. The report and remittance are due not later than the 20th day of the month following the end of the calendar quarter.

(f) [~~(e)~~] An invoice or other record required by this section or rules of the comptroller must be maintained for at least four years after the date on which the invoice or record is prepared and be open for inspection by the comptroller at all reasonable times.

(g) [~~(f)~~] The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(h) A waste tire recycling fee is imposed on the storage, use, or consumption in this state of a new tire at the same rate as provided by Subsection (a), except when purchased for the purpose of resale.

(i) A person storing, using, or consuming a new tire in this state is liable for the waste tire recycling fee as defined in this section and is responsible for reporting and paying the fee to the comptroller in the same manner as a person required to collect this fee, as provided in Subsections (d)(2) and (e).

(j) A person storing, using, or consuming a new tire in this state is not further liable for the waste tire recycling fee imposed by Subsection (a) if the person pays the fee to a wholesaler or retailer engaged in business in this state or another person authorized by the comptroller to collect the fee and receives from the wholesaler, retailer, or other person a purchaser's receipt.

SECTION 3.02. Subchapter P, Chapter 361, Health and Safety Code, is amended by adding Section 361.4725 to read as follows:

Sec. 361.4725. REGISTRATION; FEE. A person who applies to the commission to register a waste tire storage facility or a fixed or mobile tire processor, or to renew or amend the registration, must pay a fee of $500.

SECTION 3.03. Sections 361.475, 361.476, and 361.477, Health and Safety Code, are amended to read as follows:

Sec. 361.475. WASTE TIRE RECYCLING FUND. (a) The waste tire recycling fund is a special account in the general revenue fund.

(b) The commission [~~department~~] shall administer the fund.

(c) The fund consists of fees and penalties collected under this subchapter, interest on money in the fund, and money from gifts, grants, or any other source intended to be used for the purposes of this subchapter.

(d) The fund may be used only to pay:

(1) waste tire processors that meet the requirements for payment under Section 361.477 and rules adopted under that section;

(2) the commission's [~~department's~~] reasonable and necessary administrative costs of performing its duties under this subchapter in an amount not to exceed six percent of the money annually accruing to the fund; and

(3) the comptroller's reasonable and necessary administrative costs of performing the comptroller's duties under this subchapter in an amount not to exceed two percent of the money annually accruing to the fund.

(e) Registration fees received under Section 361.4725 shall be allocated to the commission for its reasonable and necessary costs associated with reviewing applications for registration of and with registering fixed and mobile tire processing facilities and storage sites.

(f) The fund may not be used to reimburse shredding of:

(1) innertubes;

(2) scrap rubber products;

(3) green tires;

(4) industrial solid waste, excluding waste tires;

(5) oversized tires, as defined by commission rule, unless the oversized tires are collected from a priority enforcement list site; or

(6) manufacturer reject tires.

(g) The commission may classify special authorization tires, as defined by commission rule, as priority enforcement list tires.

(h) The fund shall maintain a balance of not less than $500,000.

(i) If the commission has reason to believe that the fund balance will fall below $500,000, the commission may:

(1) suspend the requirement to reimburse priority enforcement list tires shredded in excess of the minimum percentage identified in Section 361.477(c)(3)(C); or

(2) limit the number of waste tires for which a processor will be reimbursed.

(j) The revenues obtained from the waste tire recycling fees shall be deposited to the credit of the waste tire recycling fund and may be used only to pay for those activities and costs identified in Subsection (d) or (e).

Sec. 361.476. PRIORITY ENFORCEMENT LIST. The commission [~~department~~] shall identify scrap [~~unauthorized~~] tire sites [~~dumps~~] that present an existing or potential threat to public health and safety or to the environment and shall prepare an enforcement list of those sites [~~dumps~~], giving priority to sites [~~dumps~~] for which the commission cannot locate a person who:

(1) is the property owner of record, the site operator, or the depositor of the scrap tires on the site;

(2) has benefitted financially from the disposition of the scrap tires on the site; and

(3) is financially capable of paying all or part of the total or partial cleanup of the site, considering the costs of the cleanup as the commission determines [~~a responsible party cannot be located~~].

Sec. 361.477. PAYMENTS TO WASTE TIRE PROCESSORS. (a) The commission [~~department~~] each month shall pay a waste tire processor that shreds scrap tires and meets the requirements of this section and rules adopted under this section an amount equal to 85 cents for each weighed tire shredded by the processor during the preceding calendar month.

(b) If the total number of used or scrap tires or tire pieces contained in illegal scrap tire sites that are identified on the priority enforcement list is below 500,000 tires, the commission may pay more than 85 cents for each weighed tire to processors with whom the commission has contracted to remove and shred scrap tires and scrap tire pieces from priority enforcement list sites. The 500,000 tire limit does not include those tires contained in sites under commission enforcement or attorney general action or that require corrective action or remedial action in response to a release or threat of release of hazardous substances. In acting under this subsection, the commission may contract with processors on a regional or site-specific basis. The contracts shall be procured through a competitive bid process conducted in accordance with the provisions of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) applicable to contracts for services. The commission may elect not to enter into contracts under this subsection. The contracts may be only for the removal and shredding of tires from priority enforcement list sites.

(c) A waste tire processor that desires to receive payment under this section for tires shredded by the processor during a calendar month must:

(1) apply to the commission for registration [~~department~~] in accordance with forms prescribed by the commission [~~department~~];

(2) apply to the commission for payment on forms prescribed by the commission or, on a voluntary basis, apply by a removable storage medium stored in an industry standard file format acceptable to the commission;

(3) demonstrate as required by rules adopted under this section that:

(A) all tires for which payment is sought have been shredded to a particle size not larger than nine square inches; [~~and~~]

(B) not less than 25 percent of those tires were collected from generators; and

(C) if the total number of used or scrap tires or tire pieces contained in illegal waste tire sites that are identified on the priority enforcement list exceeds 500,000 tires for more than 30 consecutive days, not less than 15 [~~25~~] percent and not more than 30 percent of those tires were collected from scrap tire sites [~~dumps~~] listed on the [~~department's~~] priority enforcement list;

(4) [~~(3)~~] provide any other information the commission [~~department~~] determines is needed to accomplish the purposes of this subchapter, including a monthly report of scrap tires or tire pieces shredded, subtotaled by tire count or weight, for each generator number and priority enforcement list number; [~~and~~]

(5) [~~(4)~~] demonstrate that energy recovery activities in the state are in compliance with applicable air emission control rules and standards as adopted by the Texas Air Control Board; and

(6) provide financial assurance deemed adequate by the commission that corresponds to:

(A) the payment appropriate for the number of scrap tires the processor anticipates shredding in the next calendar month; or

(B) the number of scrap tires the waste tire storage site owner or operator anticipates accepting for storage in the next calendar month.

(d) [~~(c)~~] A waste tire processor that in any month exceeds the [~~25 percent~~] minimum requirement of Subsection (c)(3)(C) [~~(b)(2)~~] shall receive a credit for the amount in excess of the requirement [~~25 percent~~] that may be used to meet the minimum requirement during a later month. The commission [~~board of health~~] by rule may prescribe the method of applying credits accrued under this subsection.

(e) [~~(d)~~] The commission [~~board of health~~] by rule shall adopt application and payment procedures and requirements to implement this section.

(f) Until the commission has determined that a waste tire processor is in compliance with all applicable requirements, the commission may not authorize the processor to process or store scrap tires at a site at which the processor processes or stores or intends to process or store scrap tires.

(g) Notwithstanding Section 361.486, the commission may reimburse a processor for shredded scrap tires if the processor has a binding agreement to deliver the shredded scrap tires to a person to recycle or

reuse or to use for energy recovery within 180 days after the date of reimbursement.

(h) The commission may not pay a waste tire processor for processing scrap tires if the commission determines that the processor:

(1) has not provided adequate financial assurance;

(2) does not have adequate fire protection; or

(3) is causing an imminent danger to public health or welfare.

(i) The commission shall issue to an applicant all processing and storage registrations necessary to begin operations and obtain reimbursement from the fund if the applicant, on or before March 10, 1993:

(1) had an application pending for a new processing facility that was reviewed by the commission and found to be in general technical compliance;

(2) had an application pending for a new storage facility with a total capacity in excess of 7 million waste tire units; and

(3) had expended or committed in excess of $1 million in total project costs.

(j) The commission shall adopt rules to manage payments from the fund to prevent depletion of the fund. Rules adopted under this subsection shall consider:

(1) appropriate payments to reflect the varying amounts of money available in the fund;

(2) a waste tire processor's monthly average number of tires for which the processor has been reimbursed historically;

(3) a waste tire processor's shredding and storage capacity; and

(4) the date the waste tire processor was registered.

(k) If a waste tire processor does not fully use its monthly allocation for reimbursement, the commission may assign the unused portion of the allocation to another waste tire processor who can demonstrate having underutilized shredding and storage capacity available for service to rural counties in this state.

(l) A person receiving payment from the fund may only receive more than 85 cents per waste tire unit under Subsection (b).

~~[(c) A permitted Type VIII tire monofill approved under board of health rules may qualify as a waste tire processor and is eligible to receive payment under this section if the Type VIII tire monofill complies with all the provisions of this subchapter and rules of the board of health.]~~

SECTION 3.04. Subchapter P, Chapter 361, Health and Safety Code, is amended by adding Sections 361.4771, 361.4772, and 361.4773 to read as follows:

Sec. 361.4771. PAYMENT FOR SHREDDING OUTSIDE OF STATE. Effective September 1, 1994, the commission may reimburse a registered waste tire processor for shredding tires generated in this state and shredded outside this state if the processor:

(1) meets all requirements that apply to a waste tire processor who shreds tires within this state;

(2) monthly reimburses the state for reasonable and necessary costs incurred by an agency of the state for such related to the out-of-state facility regulatory activities as are deemed necessary by such agency;

(3) voluntarily submits to the commission's enforcement authority as necessary to ensure compliance with this subchapter; and

(4) agrees to maintain evidence of financial responsibility under Section 361.479 in an amount equal to twice the amount that would be required of an in-state waste tire processor.

Sec. 361.4772. PAYMENT FOR BALING TIRES. Effective March 1, 1994, a registered waste tire processor who bales whole tires for energy recovery purposes is eligible for reimbursement at a rate of 25 cents for each tire if the processor meets the requirements of this subchapter that apply to a waste tire processor including provisions for financial assurance for such baled tires. The commission shall adopt rules to determine the amount of financial assurance required under this section to apply to baled tires or whole tires stored for baling. A processor seeking reimbursement under this section for baling tires may not, directly or indirectly, receive additional reimbursement from the fund for the shredding of such baled tires.

Sec. 361.4773. PAYMENT FOR RECYCLING TIRES INTO PRODUCT. The commission by rule may establish a program to reimburse from the fund a waste tire recycler no more than 25 cents for each weighed tire the waste tire recycler processes to make useful products.

SECTION 3.05. Sections 361.478 and 361.479, Health and Safety Code, are amended to read as follows:

Sec. 361.478. EVALUATION OF RECYCLING AND ENERGY RECOVERY ACTIVITIES; CERTIFICATION FOR PAYMENT. (a) Beginning January 1, 1996 [~~June 1, 1995~~], and every two [~~five~~] years after that date, the commission [~~department~~] shall evaluate according to standards adopted by commission [~~board of health~~] rule the recycling and energy recovery activities of each waste tire processor that received payment from the waste tire recycling fund [~~under Section 361.477 during the preceding five years~~].

(b) After evaluation, the commission [~~department~~] shall certify as eligible for payment under this subchapter [~~Section 361.477~~] during the next two [~~five~~] years a waste tire processor that has conducted or provided for recycling of or energy recovery from tires for which the processor received payment during the preceding period of operation [~~five years~~].

(c) A waste tire processor that receives payment under this subchapter [~~Section 361.477~~] during any two-year [~~five-year~~] period and that after evaluation is not certified by the commission [~~department~~] under Subsection (b) as eligible for payment under this subchapter [~~Section 361.477~~] may not receive payment under this subchapter [~~that section~~] for the next two [~~five~~] years.

(d) The commission [~~board of health~~] by rule may establish a procedure by which a waste tire processor can reestablish eligibility for payment under this subchapter [~~Section 361.477~~].

Sec. 361.479. EVIDENCE OF FINANCIAL RESPONSIBILITY. (a) A waste tire storage facility registered by the commission [~~department~~] under Section 361.112 or a waste tire facility that accepts shredded scrap tires for storage or for processing for recycling, reuse, or energy recovery shall submit to the commission [~~department~~] evidence of financial responsibility

in an amount adequate to assure proper cleanup and [~~or~~] closure of the facility.

(b) A facility subject to Subsection (a) shall submit to the commission [~~department~~] an estimate of the total amount of shredded scrap tires and tire pieces measured by weighed tire that the facility will store or process, the maximum number of out-of-state tires the facility will store, and the estimated cost, using that total amount, of cleaning up and [~~or~~] closing the facility.

(c) The commission [~~department~~] shall evaluate and may amend an estimate submitted under Subsection (b) and [~~by order~~] shall determine for each facility the amount for which evidence of financial responsibility is required.

(d) Evidence of financial responsibility may be in the form of:

(1) a performance bond or[~~,~~] a letter of credit acceptable to the commission that is from a [~~recognized~~] financial institution, a trust fund, or insurance for a privately owned facility; or

(2) a self-insurance test designed by the commission[~~; or a resolution by the commissioners court or the city council, as appropriate;~~] for a publicly owned facility. A person who makes an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993, must provide evidence of financial responsibility for the full amount determined under Subsection (c).

SECTION 3.06. Sections 361.482 and 361.483, Health and Safety Code, are amended to read as follows:

Sec. 361.482. PROHIBITION ON DISPOSAL OF SHREDDED TIRES IN LANDFILL. A waste tire processor may not dispose of shredded scrap tires in a landfill if the processor has received payment under Section 361.477 for shredding the tires.

Sec. 361.483. CIVIL PENALTY. (a) A person who violates this subchapter or a rule adopted or order issued under this subchapter [~~Section 361.481 or 361.482~~] is liable for a civil penalty of up to $10,000 for each violation and for each day of a continuing violation.

(b) The attorney general or the prosecuting attorney in the county in which the alleged violation occurs may bring suit to recover the civil penalty imposed under Subsection (a).

(c) A penalty collected under this section shall be deposited to the credit of the waste tire recycling fund.

SECTION 3.07. Subchapter P, Chapter 361, Health and Safety Code, is amended by adding Sections 361.4831 and 361.4832 to read as follows:

Sec. 361.4831. INJUNCTION FOR CORRECTIVE ACTION. (a) The attorney general or the prosecuting attorney in a county in which the violation occurs may bring suit for an injunction to compel a person who violates this subchapter or a rule adopted or order issued under this subchapter to take corrective action.

(b) The suit may be brought independently of or in conjunction with a suit under Section 382.483.

Sec. 361.4832. ADMINISTRATIVE PENALTY AND ORDER FOR CORRECTIVE ACTION. If a person violates this subchapter or a rule adopted or order issued under this subchapter the commission may:

(1) assess against the person an administrative penalty under Section 361.252; or

(2) order the person to take a corrective action.

SECTION 3.08. Sections 361.484 and 361.485, Health and Safety Code, are amended to read as follows:

Sec. 361.484. RULES. The commission [~~board of health~~] may adopt rules reasonably necessary to implement this subchapter.

Sec. 361.485. REPORT. Not later than February 1 of each odd-numbered year, the commission [~~department~~] shall report to the governor and the legislature on the administration of the program established under this subchapter and its effectiveness in cleaning up existing scrap tire sites [~~dumps~~] and in preventing new scrap tire sites [~~dumps~~].

SECTION 3.09. Subchapter P, Chapter 361, Health and Safety Code, is amended by adding Sections 361.486 through 361.495 to read as follows:

Sec. 361.486. RECYCLING EFFORTS. (a) On and after January 1, 1996, for all new, amended, and renewal processing registration applications, the processor must identify those persons who will accept the processor's shredded scrap tire pieces for recycling or reuse or to use the shredded scrap tires for energy recovery. The commission shall reimburse a processor for only those shredded tires that the commission determines are committed to a legitimate end user.

(b) The commission may disapprove of the use a person identified by the processor has for the tire pieces unless the person identified is authorized by the state to use tire-derived fuel for energy recovery.

(c) The commission by rule shall define recycling for purposes of this subchapter.

(d) On or before January 1, 1994, and on a semiannual basis thereafter, registered processors and storage site owners and operators shall report their recycling, reuse, and energy recovery activities to the commission. The commission by rule shall prescribe the form and other requirements of the report.

(e) A person who, in this state, recycles or recovers the energy from shredded tire pieces shall register with the commission in accordance with the rules and on the forms prescribed by the commission.

Sec. 361.487. REIMBURSEMENT RESTRICTIONS. (a) A processor seeking reimbursement under Section 361.477 shall process and store the scrap tires or scrap tire pieces in the state.

(b) The commission shall treat scrap tires and scrap tire pieces generated in Texas, removed from Texas, and subsequently reintroduced to Texas as out-of-state scrap tires for the purposes of this subchapter.

(c) Scrap tires and scrap tire pieces that are shredded and for which a person is reimbursed may not be disposed of in a Type VIII-S tire monofill.

Sec. 361.488. GENERATOR CHARGE FOR SCRAP TIRES PROHIBITED. A scrap tire generator may not receive remuneration in exchange for scrap tires.

Sec. 361.489. IMMEDIATE REMOVAL AND REMEDIAL ACTION BY COMMISSION. (a) The commission may, with the funds available to

the commission from the waste tire recycling fund, undertake immediate remediation of a site if, after investigation, the commission finds:

(1) that there exists a situation caused by the illegal dumping of scrap tires that is causing or may cause imminent and substantial endangerment to the public health and safety or the environment; and

(2) the immediacy of the situation makes it prejudicial to the public interest to delay action until an administrative order can be issued to potentially responsible parties or until a judgment can be entered in an appeal of an administrative order.

(b) If a person ordered to eliminate an imminent and substantial danger to the public health and safety or the environment has failed to do so within the time limits specified in the order or any extension of time approved by the commission, the commission may implement a remedial program for the site.

(c) The commission may bring suit against a potentially responsible party to recover reasonable expenses incurred in undertaking immediate removal under Subsection (a) or in implementing a remedial action order under Subsection (b). For purposes of this subsection, the commission shall employ the following three criteria to determine whether a person is a potentially responsible party:

(1) the person must be the property owner of record, the site operator, or the depositor of the scrap tires on the site;

(2) the person must have benefitted financially from the disposition of the scrap tires on the site; and

(3) the person must be financially capable of paying all or part of the costs of the total or partial cleanup of the site, considering the costs of the cleanup as determined by the commission.

(d) The commission shall file the suit to recover costs not later than one year after the date removal or remedial measures are completed.

(e) Money collected in a suit to recover costs shall be deposited to the credit of the waste tire recycling fund.

(f) The commission, in lieu of bringing suit to recover costs incurred under this section, may file a lien against the property on which the site is located. The lien shall state the name of the owner of the property, the amount owed, and the legal description of the property. The lien arises and attaches on the date the lien is filed in the real property records of the county in which the property is located. The lien is subordinate to the rights of prior bona fide purchasers or lienholders on the property.

Sec. 361.490. ACCESS TO PRIORITY ENFORCEMENT LIST SITE. (a) Members of the commission, employees or agents of the commission, and authorized processors or their subcontractors are entitled to enter any public or private property at any reasonable time for the purpose of inspecting, investigating, or remediating any condition related to illegal dumping of scrap tires. An authorized processor or subcontractor is entitled to enter property only if the commission directs the processor or subcontractor to enter the property. The executive director shall give notice of intent to enter private property for those purposes by certified mail to the last known address indicated in the current county property records at least 10 days before a commission member, commission

employee or agent, or authorized processor or subcontractor enters the property. A commission member, commission employee or agent, or authorized processor or subcontractor who, acting under this subsection, enters private property shall:

(1) observe the establishment's rules concerning safety, internal security, and fire protection; and

(2) if the property has management in residence, make a reasonable attempt to notify the management or person in charge of the entry and exhibit credentials.

(b) Authorized processors and their subcontractors may not be considered agents of the state and are solely responsible for their actions.

Sec. 361.491. INJUNCTION TO RESTRAIN VIOLATION. If it appears that a person has violated, is violating, or is threatening to violate this subchapter or a rule, permit, or order adopted or issued under this subchapter, the executive director may bring suit in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation.

Sec. 361.492. NEW TIRE WHOLESALERS AND RETAILERS. A person selling new tires as described in Section 361.472(a) shall accept from customers, without charge, used tires of the type and in a quantity at least equal to the number of new tires purchased.

Sec. 361.493. CONFIDENTIALITY. Information submitted to the commission in accordance with Section 361.477(g) or Section 361.486(a) or (d), and any report generated by the commission based on the information, is confidential and is not subject to disclosure under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and the commission shall protect the information accordingly.

Sec. 361.494. APPEAL. The commission shall establish a process by which a registered waste tire processor who is adversely affected by an agency decision affecting reimbursement may appeal that decision to the executive director or the commission.

Sec. 361.495. ENSURING CAPACITY. Not later than October 1 of each odd-numbered year, the commission shall determine the total shredding capacity of all registered waste tire processors. If the commission determines that the shredding capacity is less than the previous year's reimbursed waste tire units, the commission may issue registrations to waste tire processors until the anticipated shredding capacity equals the previous year's reimbursed waste tire units. If the commission determines that the shredding capacity exceeds the previous year's reimbursed waste tire units, the commission may not issue a registration to a new waste tire processor until the next capacity assessment is completed.

SECTION 3.10. Section 361.014, Health and Safety Code, is amended to read as follows:

Sec. 361.014. USE OF SOLID WASTE FEE REVENUE. (a) Revenue received by the department under Section 361.013 shall be deposited in the state treasury to the credit of the department. At least half the revenue is dedicated to the department's municipal solid waste permitting and enforcement programs and related support activities, and the balance of the

revenue is dedicated to pay for activities that will enhance the state's solid waste management program, including:

(1) provision of funds for the municipal solid waste management planning fund and the municipal solid waste resource recovery applied research and technical assistance fund established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363);

(2) provision of technical assistance to local governments concerning solid waste management;

(3) establishment of a solid waste resource center in the department and an office of waste minimization and recycling;

(4) provision of supplemental funding to local governments for the enforcement of this chapter, the Texas Litter Abatement Act (Chapter 365), and Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes);

(5) conduct of a statewide public awareness program concerning solid waste management;

(6) provision of supplemental funds for other state agencies with responsibilities concerning solid waste management, recycling, and other initiatives with the purpose of diverting recyclable waste from landfills;

(7) conduct of research to promote the development and stimulation of markets for recycled waste products;

(8) creation of a state municipal solid waste superfund for:

(A) the cleanup of unauthorized tire dumps and solid waste dumps for which a responsible party cannot be located or is not immediately financially able to provide the cleanup; and

(B) the cleanup or proper closure of abandoned or contaminated municipal solid waste sites for which a responsible party is not immediately financially able to provide the cleanup; and

(9) provision of funds for other programs that the board of health may consider appropriate to further the purposes of this chapter.

(b) Revenue derived from fees charged under Section 361.013(c) to a transporter of whole used or scrap tires or shredded tire pieces shall be deposited to the credit of the waste tire recycling fund.

SECTION 3.11. Section 361.112, Health and Safety Code, is amended by adding Subsection (m) to read as follows:

(m) The commission may adopt rules to regulate the storage of scrap or shredded tires that are stored at a marine dock, rail yard, or trucking facility for more than 30 days.

SECTION 3.12. Section 363.041, Health and Safety Code, is amended to read as follows:

Sec. 363.041. COMPOSITION OF ADVISORY COUNCIL. The Municipal Solid Waste Management and Resource Recovery Advisory Council is composed of the following 17 [~~15~~] members appointed by the board:

(1) an elected official from a municipality with a population of 750,000 or more;

(2) an elected official from a municipality with a population of 100,000 or more but less than 750,000;

(3) an elected official from a municipality with a population of 25,000 or more but less than 100,000;

(4) an elected official from a municipality with a population of less than 25,000;

(5) two elected officials of separate counties, one of whom is from a county with a population of less than 150,000;

(6) an official from a municipality or county solid waste agency;

(7) a representative from a private environmental conservation organization;

(8) a representative from a public solid waste district or authority;

(9) a representative from a planning region;

(10) a representative of the financial community;

(11) a representative from a solid waste management organization composed primarily of commercial operators;

(12) a board member; [~~and~~]

(13) two persons representing the public who would not otherwise qualify as members under this section;

(14) a registered, fixed waste tire processor; and

(15) a registered, mobile waste tire processor.

SECTION 3.13. (a) The Texas Natural Resource Conservation Commission may not register a waste tire processor until after the commission makes its initial determination of the capacity of registered waste tire processors as provided by Section 361.495, Health and Safety Code, as added by this article.

(b) If this article takes immediate effect, notwithstanding the date provided by Section 361.495, Health and Safety Code, as added by this article, the Texas Natural Resource Conservation Commission shall make the initial determination of the capacity of registered waste tire processors not later than 30 days after the effective date of this article.

SECTION 3.14. The changes in the waste tire recycling fee made by Section 361.472, Health and Safety Code, as amended by this article, take effect October 1, 1993.

ARTICLE 4. USED OIL, RECYCLING, AND WASTE REDUCTION

SECTION 4.01. Section 361.421, Health and Safety Code, is amended to read as follows:

Sec. 361.421. DEFINITIONS. In this subchapter:

(1) "Compost" is the disinfected and stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(2) "Composting" means the controlled biological decomposition of organic materials through microbial activity. Depending on the specific application, composting can serve as both a volume reduction and a waste treatment measure. A beneficial organic composting activity is an appropriate waste management solution that shall divert compatible materials from the solid waste stream that cannot be recycled into higher grade uses and convert these materials into a useful product that is put to beneficial reuse [~~can serve~~] as a soil amendment or mulch.

(3) "Life-cycle cost benefit analysis" means a method of determining [~~comparing~~] the total equivalent costs and benefits of using

products over their lifetimes or over any other period of time. These costs and benefits are all associated costs and all associated benefits of each product over the time under consideration and include initial costs, annual operating costs, annual savings, future costs, and residual (salvage) values. The use of this method permits exact comparisons of these total costs and benefits to determine the most cost-effective product [~~based on initial maintenance costs which include the initial cost, maintenance costs, and other related expenses~~].

(4) "Postconsumer waste" means a material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purpose of this subchapter, the term does not include industrial or hazardous waste.

(5) "Recyclable material" means material that has been recovered or diverted from the [~~non-hazardous~~] solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste unless the material is deemed to be hazardous solid waste by the Administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), by Environmental Protection Agency regulation. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(6) "Recycled material" means materials, goods, or products that consist of recyclable material or materials derived from postconsumer waste, industrial waste, or hazardous waste which may be used in place of a raw or virgin material in manufacturing a new product.

(7) "Recycled product" means a product which meets the requirements for recycled material content as prescribed by the rules established by the department described in Section 361.427.

(8) "Recycling" means a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Recycling [~~Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling~~] includes:

(A) the composting process if the compost material is put to beneficial reuse as defined by the commission; and

(B) the application to land, as organic fertilizer, of processed sludge or biosolids from municipal wastewater treatment plants and other organic matter resulting from poultry, dairy, livestock, or other agricultural operations.

(9) "Source reduction" means an activity or process that avoids the creation of municipal solid waste in the state by reducing waste at the source and includes:

(A) redesigning a product or packaging so that less material is ultimately disposed of;

(B) changing a process for producing a good or providing a service so that less material is disposed of; or

(C) changing the way a material is used so that the amount of waste generated is reduced.

(10) "State agency" means a department, commission, board, office, council, or other agency in the executive branch of government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state. The term does not include a university system or institution of higher education as defined by Section 61.003, Education Code.

(11) [~~(10)~~] "Virgin material" means a raw material used in manufacturing that has not yet become a product.

(12) [~~(11)~~] "Yard waste" means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

SECTION 4.02. Section 361.422, Health and Safety Code, is amended to read as follows:

Sec. 361.422. STATE SOURCE REDUCTION AND RECYCLING GOAL. (a) It is the state's goal to reduce [~~achieve~~] by January 1, 1994, [~~the recycling of at least 40 percent of~~] the amount of [~~state's total~~] municipal solid waste disposed of in this state by at least 40 percent through source reduction and recycling [~~stream~~].

(b) In this section, "total municipal solid waste stream" means the sum of the state's total municipal solid waste that is disposed of as solid waste, measured in tons, and the total number of tons of recyclable material that has been diverted or recovered from the total municipal solid waste and recycled.

(c) The [~~By January 1, 1992, the~~] department shall establish rules and reporting requirements through which progress toward achieving the established source reduction and recycling goals can be measured. The rules may take into consideration those ongoing community source reduction and recycling programs where substantial progress has already been achieved. The department may also establish a limit on the amount of credit that may be given to certain high-volume materials in measuring recycling progress.

(d) For the purpose of measuring progress toward the municipal solid waste reduction goal, the department shall use the weight of the total municipal solid waste stream in 1991 as a baseline for comparison. To compute progress toward the municipal solid waste reduction goal for a year, the department shall compare the total number of tons disposed in the year under comparison, either by landfilling or by other disposal methods, to the total number of tons disposed in the base year, adjusting for changes in population, tons of solid waste imported and exported, and other relevant changes between the baseline year and the comparison year.

(e) Before January 1, 1994, the commission shall determine whether the goal established in Subsection (a) is being achieved. If the commission finds that the goal is not being achieved, it shall convene an advisory task force consisting of representatives of the commission, the General Land Office, local governments, the Municipal Solid Waste Management and Resource Recovery Advisory Council, and the commercial solid waste disposal industry and may recommend to the legislature a phased-in ban on the disposal of yard waste in a landfill. The task force may recommend a plan to the legislature for implementing the ban after considering how the ban will:

(1) affect the state's disposal capacity;

(2) affect the economy of the state;

(3) affect local governments; and

(4) be accepted and adhered to by the citizens of the state.

SECTION 4.03. Section 361.425, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) A state agency, state court or judicial agency, a university system or institution of higher education, a county, municipality, school district, or special district shall:

(1) in cooperation with the [~~State Purchasing and~~] General Services Commission or the department establish a program for the separation and collection of all recyclable materials generated by the entity's operations, including, at a minimum, aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard;

(2) provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials;

(3) evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and

(4) establish educational and incentive programs to encourage maximum employee participation.

(d) In this section, "recyclable materials" includes materials in the entity's possession that have been abandoned or disposed of by the entity's officers or employees or by any other person.

SECTION 4.04. The heading to Subchapter N, Chapter 361, Health and Safety Code, is amended to read as follows:

SUBCHAPTER N. WASTE REDUCTION [~~RECYCLING~~] PROGRAMS; DISPOSAL FEES

SECTION 4.05. Subdivision (1), Section 371.003, Health and Safety Code, is amended to read as follows:

(1) "Automotive oil" means any lubricating oils intended for use in an internal combustion engine, crankcase, transmission, gear box, or differential for an automobile, bus, or truck. The term includes oil that is not labeled specifically for that use but is suitable for that use according to generally accepted industry specifications.

SECTION 4.06. Section 371.061, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) The fund is exempt from the application of Sections 403.094(h) and 403.095, Government Code.

SECTION 4.07. Subchapter B, Chapter 371, Health and Safety Code, is amended by adding Sections 371.0245 and 371.0246 to read as follows:

Sec. 371.0245. REIMBURSEMENT OF COLLECTION CENTER. (a) The commission, on proper application, shall reimburse the owner or operator of an eligible registered public used oil collection center for costs associated with the collection center's disposal of:

(1) do-it-yourself (DIY) used oil collected by the collection center that, unknown to the center at the time of collection, contains hazardous wastes;

(2) used oil collected by the collection center that has been commingled with DIY oils described in Subdivision (1) and is unsuitable for recycling; or

(3) contaminated used oil left at the collection center as used oil after posted business hours and without the knowledge of the collection center.

(b) A registered public used oil collection center is eligible for reimbursement if it demonstrates to the satisfaction of the commission that:

(1) the center has established procedures to minimize the risk that the used oil the center generates or collects from the public will not be mixed with hazardous wastes, especially halogenated wastes;

(2) the center accepts not more than five gallons of used oil from any person at any one time; and

(3) the center can document to the satisfaction of the commission the volume of used oil the center collects from the public during a period by:

(A) providing a process by which all individuals leaving do-it-yourself (DIY) used oil at the center are required to log their names, addresses, and the approximate amounts of used oil brought to the collection center and ensuring that all do-it-yourself (DIY) used oil collected is kept in a separate sealed and labeled container placed on an impermeable surface; or

(B) another method approved by the commission.

(c) For the purpose of Subsection (b)(2), the owner or operator of a registered public used oil collection center may presume that a quantity of not more than five gallons of used oil collected from a member of the public is not mixed with a hazardous substance, if the owner or operator acts in good faith and in the belief the oil is generated from the individual's personal activity.

(d) In any state fiscal year, a registered public used oil collection center may not be reimbursed for more than $5,000 in total eligible disposal costs, subject to Section 371.0246(d).

(e) A reimbursement made under this section may be paid out of the used oil recycling fund not to exceed an aggregate amount of $500,000 each fiscal year.

Sec. 371.0246. PROCEDURES FOR REIMBURSEMENT. (a) An owner or operator of a registered public used oil collection center may apply for reimbursement from the commission.

(b) An application for reimbursement shall be filed on a form approved or provided by the commission.

(c) An application must contain:

(1) the name, address, and telephone number of the applicant;

(2) the name, mailing address, location address, and commission registration number of the registered public used oil collection center from which the contaminated oil was removed;

(3) the name, address, telephone number, and commission registration number of the hazardous waste transporter used to dispose of the contaminated used oil;

(4) a copy of the signed uniform hazardous waste manifest;

(5) a copy of each invoice for which reimbursement is requested and evidence that the amount shown on the invoice has been paid in full, which may be in the form of:

(A) canceled checks;

(B) business receipts from the person who performed the work; or

(C) other documentation approved by the commission;

(6) a waste-characterization or similar documentation required before acceptance of a hazardous waste by the disposal facility that accepted the contaminated used oil for disposal; and

(7) any other information that the executive director may reasonably require.

(d) All claims for reimbursement filed under this section and Section 371.0245 are subject to the availability of money in the used oil recycling fund and to Section 371.0245(e). This subchapter does not create an entitlement to money in the used oil recycling fund or any other fund.

SECTION 4.08. Subchapter D, Chapter 371, Health and Safety Code, is amended by adding Section 371.063 to read as follows:

Sec. 371.063. ANNUAL REPORTING REQUIREMENT. The commission shall monitor the balance of the used oil recycling fund and shall provide a detailed report of all income, expenditures, and programs funded to the Texas Legislature on an annual basis.

SECTION 4.09. Section 371.062, Health and Safety Code, is amended to read as follows:

Sec. 371.062. FEE ON SALE OF AUTOMOTIVE OIL. (a) In this section:

(1) "First sale" means the first actual sale of automotive oil delivered to a location in this state and sold to a purchaser who is not an automotive oil manufacturer. The term does not include the sale of automotive oil exported from this state to a location outside this state for the purpose of sale or use outside this state. This term does not include sales of automotive oils for resale to or use by vessels exclusively engaged in foreign or interstate commerce.

(2) "Importer" means any person who imports or causes to be imported automotive oil into this state for sale, use, or consumption.

(3) "Oil manufacturer" means any person or entity that formulates automotive oil and packages, distributes, or sells that automotive oil. The term includes any person packaging or repackaging automotive oil.

(b) An oil manufacturer [~~or importer~~] who makes a first sale of automotive oil is liable for a fee.

(c) An oil importer who imports or causes to be imported automotive oil is liable for the fee at the time the oil is received.

(d) An oil distributor or retailer who exports from this state to a location outside this state oil on which the automotive oil fee has been paid may request from his supplier a refund or credit of the fee paid on the exported oil. The supplier or oil manufacturer and the importer may in turn request a refund of the fee paid to the comptroller. The amount of refund that may be claimed under this section may equal but not exceed the amount of the fee paid on the automotive oil.

(e) An oil manufacturer, importer, distributor, or retailer who makes a sale to a vessel or a sale for resale to a vessel of automotive oil on which the automotive oil fee has been paid may file with the comptroller a request for refund of the fee paid on the oil or, where applicable, may request a refund or credit from the supplier to whom the fee was paid. The supplier may in turn request a refund from the comptroller. The amount of refund that may be claimed under this section may equal but not exceed the amount of the fee paid on the automotive oil.

(f) Each oil manufacturer or importer required to pay a fee under this section shall:

(1) prepare and maintain, on a form provided or approved by the comptroller, a report of each first sale or, in the case of an importer, the first receipt in Texas of automotive oil by the person and the price received;

(2) retain the invoice or a copy of the invoice or other appropriate record of the sale or receipt for four years from the date of sale or receipt; and

(3) on or before the 25th day of the month following the end of each calendar quarter, file a report with the comptroller and remit to the comptroller the amount of fees required to be paid for the preceding quarter.

(g) [~~(d)~~] Records required to be maintained under Subsection (f) [~~(c)~~] shall be available for inspection by the comptroller at all reasonable times.

(h) [~~(e)~~] The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(i) [~~(f)~~] Except as provided by this section, Chapters 101 and 111 through 113, Tax Code, apply to the administration, payment, collection, and enforcement of fees under this section in the same manner that those chapters apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(j) [~~(g)~~] The fee imposed under this section is two cents per quart or eight cents per gallon of automotive oil. The department shall monitor the unobligated balance of the used oil recycling fund and shall adjust the fee rate to meet expenditure requirements of the used oil recycling program and to maintain an appropriate fund balance. The fee imposed under this section may not exceed five cents per quart or 20 cents per gallon of automotive oil. On or before September 1 of each year, the department

and the comptroller jointly shall issue notice of the effective fee rate for the next fiscal year.

(k) [~~(h)~~] A person required to pay a fee under this section may retain one percent of the amount of the fees due from each quarterly payment as reimbursement for administrative costs.

(l) [~~(i)~~] The comptroller may deduct a percentage of the fees collected under this section in an amount sufficient to pay the reasonable and necessary costs of administering and enforcing this section. The comptroller shall credit the amount deducted to the general revenue fund. The balance of fees and all penalties and interest collected under this section shall be deposited to the credit of the used oil recycling fund.

SECTION 4.10. The change in law made by Sections 371.0245 and 371.0246, Health and Safety Code, as added by this article, applies only to costs incurred by an eligible registered public used oil collection center on or after September 1, 1993.

SECTION 4.11. Not later than December 1, 1993, the Texas Water Commission or its successor shall adopt any rules necessary to administer the reimbursement program established by Sections 371.0245 and 371.0246, Health and Safety Code, as added by this article.

SECTION 4.12. (a) Except as provided by Subsection (b), this article takes effect October 1, 1993.

(b) Sections 4.07 and 4.08 take effect September 1, 1993.

ARTICLE 5. MISCELLANEOUS

SECTION 5.01. This Act does not affect the transfer of powers, duties, rights, and obligations made by Chapter 3, Acts of the 72nd Legislature, 1st Called Session, 1991.

SECTION 5.02. Except as otherwise provided by this Act, this Act takes effect immediately.

SECTION 5.03. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1043

Senator Parker submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1043** have

met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

PARKER	SAUNDERS
SIMS	KUEMPEL
BARRIENTOS	GRAY
ELLIS	EARLEY
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of radioactive source material recovery, processing, and disposal activities and establishing and appropriating fees; transferring functions and appropriations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter G, Chapter 401, Health and Safety Code, is amended to read as follows:

SUBCHAPTER G. SPECIAL PROVISIONS CONCERNING BY-PRODUCT MATERIAL

Sec. 401.261. SUBCHAPTER APPLICATION. In [~~A reference in~~] this subchapter:

(1) "By-product material" does not include [~~to by-product material includes only~~] that by-product material defined by Section 401.003(3)(A) [~~401.003(3)(B)~~].

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Federal commission" means the United States Nuclear Regulatory Commission.

(4) "Processing" means the possession, use, storage, extraction of material, transfer, volume reduction, compaction, or other separation incidental to recovery of source material.

Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT MATERIAL. The commission has sole and exclusive authority to [~~department shall~~] assure that by-product material is managed in compliance with the federal commission's applicable standards.

Sec. 401.2625. LICENSING AUTHORITY. The commission has sole and exclusive authority to [~~commissioner shall~~] grant, deny, renew, revoke, suspend, amend, or withdraw licenses for source material [~~uranium~~] recovery and processing, including the disposal of by-product material [~~uranium mill tailings~~].

Sec. 401.263. APPLICATION; ENVIRONMENTAL ANALYSIS. (a) If the commission [~~department~~] is considering the issuance, [~~or~~] renewal, or amendment of a license to process materials that produce by-product materials and determines that the licensed activity [~~license~~] will have a significant impact on the human environment, the commission [~~department~~] shall prepare or have prepared a written environmental analysis.

(b) The analysis must include:

(1) an assessment of the radiological and nonradiological effects of the licensed activity on the public health;

(2) an assessment of any effect of the licensed activity on a waterway or groundwater;

(3) consideration of alternatives to the licensed activity, including alternative sites and engineering methods; and

(4) consideration of decommissioning, decontamination, reclamation, and other long-term effects associated with a licensed activity, including management of by-product material.

(c) The commission [~~department~~] shall give notice of the analysis as provided by agency rule and shall make the analysis available to the public for written comment not later than the 31st day before the date of the hearing on the license.

(d) After notice is given, the commission [~~department~~] shall provide an opportunity for written comments by persons affected.

(e) The analysis shall be included as part of the record of the commission's [~~department's~~] proceedings.

(f) The commission [~~department~~] shall prohibit major construction with respect to an activity that is to be licensed until the requirements of Subsections (a), (b), (c), and (e) are completed.

Sec. 401.264. NOTICE AND HEARING. (a) The commission on its own motion may or on the written request of a person affected [~~department~~] shall provide an opportunity for a public hearing on an application over which the commission has jurisdiction [~~environmental analysis~~] to determine whether to issue, [~~or~~] renew, or amend a license to process materials that produce by-product materials in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and permit appearances with or without counsel and the examination and cross-examination of witnesses under oath.

(b) A person affected may become a party to a proceeding on a determination that the person possesses a justiciable interest in the result of the proceeding.

(c) The commission [~~department~~] shall make a record of the proceedings and provide a transcript of the hearing on request of, and payment for, the transcript or provision of a sufficient deposit to assure payment by any person requesting the transcript.

(d) The commission [~~department~~] shall provide an opportunity to obtain a written determination of action to be taken. The determination must be based on evidence presented to the commission [~~department~~] and include findings. The written determination is available to the public.

(e) The determination is subject to judicial review in a district court of Travis County.

Sec. 401.265. CONDITIONS OF CERTAIN BY-PRODUCT MATERIAL LICENSES. The commission [~~department~~] shall prescribe conditions in a radioactive material license issued, [~~or~~] renewed, or amended for an activity that results in production of by-product material to minimize or, if possible, eliminate the need for long-term maintenance

and monitoring before the termination of the license, including conditions that:

(1) the license holder will comply with the applicable decontamination, decommissioning, reclamation, and disposal standards that are prescribed by the board or commission and that are equivalent to or more stringent than the federal commission's standards for sites at which those ores were processed and at which the by-product material is deposited; and

(2) the ownership of a disposal site, other than a disposal well covered by a permit issued under Chapter 27, Water Code, and the by-product material resulting from the licensed activity are transferred, subject to Sections 401.266-401.269, to:

(A) the state; or

(B) the federal government if the state declines to acquire the site, the by-product material, or both the site and the by-product material.

Sec. 401.266. TRANSFER OF LAND REQUIRED. (a) The commission [~~board~~] by rule or [~~may require or the department~~] by order may require that before a license covering land used for the disposal of by-product material is terminated, the land, including any affected interests in the land, must be transferred to the federal government or to the state unless:

(1) the federal commission determines before the license terminates that the transfer of title to the land and the by-product material is unnecessary to protect the public health, safety, or welfare or to minimize danger to life or property; or

(2) the land is held in trust by the federal government for an Indian tribe, is owned by an Indian tribe subject to a restriction against alienation imposed by the federal government, is owned by the federal government, or is owned by the state.

(b) By-product material transferred to the state under this section shall be transferred without cost to the state[~~, other than administrative and legal costs incurred in making the transfer~~].

Sec. 401.267. ACQUISITION OF CERTAIN BY-PRODUCT MATERIALS AND SITES. The commission [~~department~~] may acquire by-product material and fee simple title in land, affected mineral rights, and buildings at which that by-product material is disposed of and abandoned so that the by-product material and property can be managed in a manner consistent with protecting public health, safety, and the environment.

Sec. 401.268. LIABILITY. The transfer of the title to by-product material, land, and buildings under Section 401.267 does not relieve a license holder of liability for [~~fraudulent or negligent~~] acts performed before the transfer.

Sec. 401.269. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES. (a) The commission [~~department~~] may undertake monitoring, maintenance, and emergency measures in connection with by-product material and property for which it has assumed custody under Section

401.267 that are necessary to protect the public health and safety and the environment.

(b) The commission [~~department~~] shall maintain the by-product material and property transferred to it in a manner that will protect the public health and safety and the environment.

Sec. 401.270. CORRECTIVE ACTION AND MEASURES. (a) If the commission [~~department~~] finds that by-product material or the operation by which that by-product material is derived threatens the public health and safety or [~~and~~] the environment [~~and that the license holder is unable to correct or remove the threat~~], the commission [~~department~~] by order may require any action, including a corrective measure, that is necessary to correct or remove the threat.

(b) The commission may issue an emergency order to a person responsible for an activity, including a past activity, concerning the recovery or processing of source material or the disposal of by-product material if it appears that there is an actual or threatened release of source material or by-product material that presents an imminent and substantial danger to the public health and safety or the environment, regardless of whether the activity was lawful at the time. The emergency order may be issued without notice or hearing.

(c) An emergency order may be issued under Subsection (b) to:

(1) restrain the person from allowing or continuing the release or threatened release; and

(2) require the person to take any action necessary to provide and implement an environmentally sound remedial action plan designed to eliminate the release or threatened release.

(d) An emergency order issued under Subsection (b) shall:

(1) be delivered to the person identified by the order by certified mail, return receipt requested;

(2) be delivered by hand delivery to the person identified by the order; or

(3) on failure of delivery of the order by certified mail or hand delivery, be served on the person by publication:

(A) once in the Texas Register; and

(B) once in a newspaper of general circulation in each county in which was located the last known address of a person identified by the order.

(e) The commission [~~department~~] shall use the security provided by the license holder to pay the costs of actions that are taken or that are to be taken under this section. The commission [~~department~~] shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

(1) enforce security supplied by the licensee;

(2) convert an amount of security into cash, as necessary; and

(3) disburse from the security in the fund the amount necessary to pay the costs.

(f) If the order issued by the commission pursuant to this section is adopted without notice or hearing, the order shall set a time, at least 10 but not more than 30 days following the date of issuance of the emergency

order, and a place for a hearing to be held in accordance with the rules of the commission. As a result of this hearing, the commission shall decide whether to affirm, modify, or set aside the emergency order. All provisions of the emergency order shall remain in force and effect during the pendency of the hearing, unless otherwise altered by the commission.

SECTION 2. Section 401.412, Health and Safety Code, is amended to read as follows:

Sec. 401.412. COMMISSION LICENSING AUTHORITY. (a) Notwithstanding any other provision of this chapter and subject to Section 401.102, the Texas Natural Resource Conservation Commission has sole and exclusive authority to directly regulate and to grant, deny, renew, revoke, suspend, amend, or withdraw [~~issue~~] licenses for the disposal of radioactive substances.

(b) Notwithstanding any other provision of this chapter, the Texas Natural Resource Conservation Commission has the sole and exclusive authority to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for the recovery and processing of source material, including the disposal of by-product material pursuant to Subchapter G.

(c) The Texas Natural Resource Conservation Commission may adopt any rules and guidelines reasonably necessary to exercise its authority under this section. In adopting rules and guidelines, the Texas Natural Resource Conservation Commission shall consider the compatibility of those rules and guidelines with federal regulatory programs and the rules and guidelines of the Texas Board of Health.

(d) The Texas Natural Resource Conservation Commission may assess and collect an annual fee for each license and registration and for each application in an amount sufficient to recover its reasonable costs to administer its authority under this chapter.

(e) The Texas Natural Resource Conservation Commission may set and collect an annual fee from the operator of each nuclear reactor or other fixed nuclear facilities in the state that uses special nuclear material. The amount of the fees collected may not exceed the actual expenses that arise from emergency response activities, including training.

(f) The Texas Natural Resource Conservation Commission shall establish by rule the amounts appropriate for the fees collected under this section. The fees collected under this section shall be deposited in the radioactive substance fee fund and reappropriated for use by the commission for expenses incurred by the commission in administering the provisions of this chapter.

SECTION 3. This Act takes effect September 1, 1993.

SECTION 4. (a) On September 1, 1993:

(1) the powers, duties, obligations, functions, and activities of the Texas Board of Health and the Texas Department of Health or the officers or employees of those agencies assigned by Chapter 401, Health and Safety Code, as it relates to the licensing and regulation of source material recovery and processing are transferred to the Texas Natural Resource Conservation Commission;

(2) all personnel, equipment, data, documents, facilities, and other items of the Texas Department of Health pertaining to the licensing and

regulation of source material recovery and processing are transferred to the Texas Natural Resource Conservation Commission; and

(3) all appropriations to the Texas Department of Health pertaining to the licensing and regulation of source material recovery and processing are automatically transferred to the Texas Natural Resource Conservation Commission.

(b) The Texas Natural Resource Conservation Commission is the successor to the Texas Department of Health for the enforcement of laws pertaining to the licensing and regulation of source material recovery and processing and shall carry out those duties, responsibilities, functions, and activities as provided by law, including Acts of the 73rd Legislature.

(c) The transfer of duties from the Texas Board of Health and the Texas Department of Health does not affect or impair any act done or obligation, right, license, permit, substantive rule, criterion, standard, requirement, or penalty accrued or existing under former law, and that law remains in effect for any action concerning such obligation, right, license, permit, substantive rule, criterion, standard, requirement, or penalty. An action brought or proceeding commenced before the effective date of this Act is governed by the rules applicable to the action or proceeding before the effective date of this Act. In this subsection, "action or proceeding" includes a contested case commenced before the effective date of this Act and an action or proceeding remanded to the Texas Department of Health by a reviewing court before the effective date of this Act.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

ORDERED NOT PRINTED

On motion of Senator Parker and by unanimous consent, the Conference Committee Report on **S.B. 498** was ordered not printed in the Senate Journal.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 498

Senator Parker submitted the following Conference Committee Report:

Austin, Texas
May 27, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 498** have met

and had the same under consideration, and beg to report it back with the recommendation that it do pass.

PARKER	CAIN
HALEY	SEIDLITS
SIBLEY	BLACK
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 628

Senator Harris of Tarrant submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 628** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HARRIS OF TARRANT	MARCHANT
SHELLEY	McCOULSKEY
ARMBRISTER	PATTERSON
ELLIS	
HENDERSON	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to a late charge imposed by a creditor for the failure of a debtor to make a scheduled payment when due; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 1.01, Title 79, Revised Statutes (Article 5069-1.01, Vernon's Texas Civil Statutes), is amended by amending Section (a) and adding Sections (j) and (k) to read as follows:

(a) "Interest" is the compensation allowed by law for the use or forbearance or detention of money; provided however, this term shall not include any time price differential however denominated arising out of a credit sale and does not include a late charge or any charge for delinquent payment imposed in connection with the sale or lease of services or goods which are sold or leased at rates or charges which are, in whole or in part,

fixed, limited, approved, or subject to oversight by a local, state, or federal governmental entity if the charge for delinquent payment is disclosed in writing on or with the billing statements for the services or goods.

(j) "Late charge" means a charge imposed by a creditor in connection with the failure of a debtor to make scheduled payments when due in connection with the use or forbearance or detention of money. A late charge does not include:

(1) an amount that accrues on a daily or other periodic basis;

(2) an amount assessed for failure to timely pay a scheduled payment that is the final maturity of the full principal balance of the indebtedness; or

(3) a late charge or any charge for delinquent payment imposed in connection with the sale or lease of services or goods which are sold or leased at rates or charges which are, in whole or in part, fixed, limited, approved, or subject to oversight by a local, state, or federal governmental entity if the charge for delinquent payment is disclosed in writing on or with the billing statements for the services or goods.

(k) "Creditor" means a person that loans money or otherwise extends credit, provided that the term shall not include a judgment creditor.

SECTION 2. Subtitle 1, Title 79, Revised Statutes (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 1.04A to read as follows:

Art. 1.04A. LATE CHARGES. (a) A creditor may impose a late charge only if:

(1) the debtor agrees in writing in the loan contract or a separate document that the creditor may impose the late charge;

(2) the late charge does not exceed five percent of the amount of the unpaid payment, including principal, interest, and all escrow amounts, and is not assessed unless the payment is not paid within a stated period of 10 or more days after the date the payment is due; and

(3) the creditor does not receive interest on accrued interest included in the amount of a delinquent payment for any period before maturity of the full principal balance of the indebtedness if the creditor actually receives a late charge with respect to the payment.

(b) A contract may provide that a creditor may charge or receive, at the creditor's option, either:

(1) interest on the amount of a delinquent payment, including interest, before maturity; or

(2) a late charge for the payment.

(c) Notwithstanding the charging or receipt of a late charge, interest may continue to accrue on the unpaid principal on an indebtedness, including unpaid principal included in the amount of the delinquent payment.

(d) A late charge that complies with this article is not subject to avoidance as an unreasonable penalty.

SECTION 3. Article 1.06, Title 79, Revised Statutes (Article 5069-1.06, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 1.06. PENALTIES. (1) Any person who contracts for, charges or receives interest which is greater than the amount authorized by this

Subtitle, shall forfeit to the obligor three times the amount of usurious interest contracted for, charged or received, such usurious interest being the amount the total interest contracted for, charged, or received exceeds the amount of interest allowed by law, and reasonable attorney fees fixed by the court except that in no event shall the amount forfeited be less than Two Thousand Dollars or twenty percent of the principal, whichever is the smaller sum; provided, that there shall be no penalty for any usurious interest which results from an accidental and bona fide error.

(2) Any person who contracts for, charges or receives interest which is in excess of double the amount of interest allowed by this Subtitle shall forfeit as an additional penalty, all principal as well as interest and all other charges and shall pay reasonable attorney fees set by the court; provided further that any such person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine of not more than One Thousand Dollars. Each contract or transaction in violation of this section shall constitute a separate offense punishable hereunder.

(3) A person who charges or receives a late charge that does not comply with Article 1.04A of this Title shall forfeit to the obligor:

(A) three times the amount of the improper late charge charged or received; and

(B) reasonable attorney fees fixed by the court.

(4) A penalty may not be assessed for a late charge that is the result of an accidental and bona fide error.

(5) All such actions brought under this Article shall be brought in any court of this State having jurisdiction thereof within four years from the date when the usurious charge was received or collected in the county of the defendant's residence, or in the county where the interest in excess of the amount authorized by this Subtitle has been received or collected, or where such transaction had been entered into or where the parties who paid the interest in excess of the amount authorized by this Subtitle resided when such transaction occurred, or where he resides.

SECTION 4. This Act takes effect September 1, 1993.

SECTION 5. (a) This Act does not apply to a loan made before the effective date of this Act, made pursuant to a commitment entered into before the effective date of this Act, or to a renewal, extension, or modification of a loan entered into or for which a commitment was entered into before the effective date of this Act, and the law in effect when the loan or commitment was entered into continues in effect for that purpose.

(b) Notwithstanding Subsection (a) of this section, a debtor and a creditor may agree in writing to be subject to this Act on or after the effective date of this Act regarding indebtedness created before the effective date of this Act.

(c) Nothing in this Act shall be construed as implying that a late charge imposed before the effective date of this Act or subsequent to the effective date of this Act regarding indebtedness created before the effective date of this Act is in violation of Title 79, Revised Statutes (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes).

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 963

Senator Sims submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 963** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

SIMS	SAUNDERS
ARMBRISTER	CHISUM
BIVINS	KUEMPEL
SHELLEY	TALTON
TRUAN	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to municipal solid waste management.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) the reduction of municipal solid waste by encouraging affordable alternatives to disposal is an important strategy in state-local waste management policy;

(2) improving all the municipal solid waste management techniques is necessary to achieve the goal of reducing the municipal solid waste stream;

(3) waste reduction efforts should focus on waste stream components that are highest in volume;

(4) a municipal solid waste infrastructure that encourages the reduction of waste through environmentally and economically sound waste

management incentives and the use of source reduction, reuse, recycling, composting, and resource recovery processes should be developed;

(5) flexible and effective means of implementing and enforcing municipal solid waste laws should be provided;

(6) incentives for businesses to use recycled materials should be created; and

(7) the actual cost of municipal solid waste disposal should be imposed by municipalities on those that place municipal solid waste in the solid waste stream in order to pay for infrastructure development and to encourage waste reduction from landfills.

SECTION 2. Section 361.014, Health and Safety Code, is amended to read as follows:

Sec. 361.014. USE OF SOLID WASTE FEE REVENUE. Revenue received by the commission [~~department~~] under Section 361.013 shall be deposited in the state treasury to the credit of the commission [~~department~~]. At least half the revenue is dedicated to the commission's [~~department's~~] municipal solid waste permitting and enforcement programs and related support activities, and the balance of the revenue is dedicated to pay for activities that will enhance the state's solid waste management program, including:

(1) provision of funds for the municipal solid waste management planning fund and the municipal solid waste resource recovery applied research and technical assistance fund established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363);

(2) conduct of demonstration projects and studies to help local governments of various populations and the private sector to convert to accounting systems and set rates that reflect the full costs of providing waste management services and are proportionate to the amount of waste generated;

(3) provision of technical assistance to local governments concerning solid waste management;

(4) [~~(3)~~] establishment of a solid waste resource center in the department and an office of waste minimization and recycling;

(5) [~~(4)~~] provision of supplemental funding to local governments for the enforcement of this chapter, the Texas Litter Abatement Act (Chapter 365), and Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes);

(6) [~~(5)~~] conduct of a statewide public awareness program concerning solid waste management;

(7) [~~(6)~~] provision of supplemental funds for other state agencies with responsibilities concerning solid waste management, recycling, and other initiatives with the purpose of diverting recyclable waste from landfills;

(8) [~~(7)~~] conduct of research to promote the development and stimulation of markets for recycled waste products;

(9) provision of funds to mitigate the economic and environmental impacts of lead-acid battery recycling activities on local governments;

(10) [~~(8)~~] creation of a state municipal solid waste superfund for:

(A) the cleanup of unauthorized tire dumps and solid waste dumps for which a responsible party cannot be located or is not immediately financially able to provide the cleanup; and

(B) the cleanup or proper closure of abandoned or contaminated municipal solid waste sites for which a responsible party is not immediately financially able to provide the cleanup; and

(11) [~~(9)~~] provision of funds for other programs that the commission [~~board of health~~] may consider appropriate to further the purposes of this chapter.

SECTION 3. Subsections (a), (b), (d), (e), and (f), Section 361.020, Health and Safety Code, are amended to read as follows:

(a) The commission [~~department~~] shall develop a strategic state solid waste plan for all solid waste under its jurisdiction. The commission shall develop a strategic [~~state solid waste~~] plan for the reduction of solid waste [~~under its jurisdiction. The state agencies shall coordinate the solid waste plans developed~~].

(b) A strategic plan shall[~~, for the kinds of waste under the jurisdiction of the agency preparing the plan,~~] identify both short-term and long-term waste management problems, set short-term objectives as steps toward meeting long-term goals, and recommend specific actions to be taken within stated [~~state~~] times designed to address the identified problems and to achieve the stated objectives and goals. A plan shall reflect the state's preferred waste management methods as stated in Section 361.022 or 361.023 [~~for the kinds of waste under the jurisdiction of the agency preparing the plan~~]. A strategic plan shall describe the total estimated generation of solid waste in the state over a five-year and a 10-year period and shall list existing and proposed solid waste management facilities to manage that waste.

(d) The commission in developing a comprehensive statewide [~~Each agency in preparing its~~] strategic plan shall:

(1) consult with:

(A) [~~(1)~~] the agency's waste minimization, recycling, or reduction division;

(B) the municipal solid waste management and resource recovery advisory council;

(C) [~~(2)~~] the waste reduction advisory committee; [~~and~~]

(D) [~~(3)~~] the interagency coordinating council; and

(E) local governments, appropriate regional and state agencies, businesses, citizen groups, and private waste management firms;

(2) hold public hearings in different regions of the state; and

(3) publish the proposed plan in the Texas Register.

(e) A strategic plan shall be updated every two years. The commission [~~Each agency~~] continually shall collect and analyze data for use in its next updated plan and systematically shall monitor progress toward achieving existing plan objectives and goals. In preparing its updated plan, an agency shall examine previously and newly identified waste management problems, reevaluate its plan objectives and goals, and review and update its planning documents.

(f) Before the [~~department or the~~] commission adopts its strategic plan or makes significant amendments to the plan, the Texas Air Control Board must have the opportunity to comment and make recommendations on the proposed plan or amendments and shall be given such reasonable time to do so as specified by the agency.

SECTION 4. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0201 to read as follows:

Sec. 361.0201. COMPREHENSIVE MUNICIPAL SOLID WASTE MANAGEMENT STRATEGIC PLAN. (a) The comprehensive municipal solid waste management strategic plan developed under Section 361.020 shall identify the components of the municipal solid waste stream that are highest in volume and shall set priorities according to those findings.

(b) The plan shall:

(1) describe the capacity in the state to manage municipal waste through existing treatment or disposal facilities and identify all existing municipal solid waste management facilities in the state, their capacity, and their projected remaining useful life; and

(2) analyze the state's capacity requirements over the planning periods specified in Section 361.020(c).

(c) The analysis of capacity requirements under Subsection (b) shall:

(1) examine the type and amount of each municipal solid waste stream that can reasonably be expected to be generated in the state or accepted from other states, using information on existing and past levels of waste and representative receipts from other states, and shall include information on the sources, characteristics, and current patterns of waste management of those waste streams; and

(2) estimate the amount of the total municipal solid waste identified under this subsection that is reasonably expected to be:

(A) recycled annually, according to previous rates and projected increases from those rates;

(B) transported annually to another state or imported into this state for treatment or other disposition according to previous rates and projected increases from those rates; and

(C) disposed of or incinerated annually within the state.

(d) The plan shall set a goal for overall reduction in the amount of municipal solid waste consistent with Section 361.422 using 1991 as the base year for computing the reduction. The commission may adjust this goal if it determines that it is not necessary given the state's disposal capacity, is not economically or technologically feasible, or is not feasible given the state's projected population growth.

(e) The plan shall ensure that source reduction, reuse, recycling, composting, and resource recovery are all addressed.

(f) The plan shall include a program of public education developed under Section 361.0202.

(g) The plan may not allow the commission to require a local government to perform any act not specifically required by state law or commission rule.

SECTION 5. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0202 to read as follows:

Sec. 361.0202. DEVELOPMENT OF EDUCATION PROGRAMS. (a) The commission shall develop a public awareness program to increase awareness of individual responsibility for properly reducing and disposing of municipal solid waste and to encourage participation in waste source reduction, composting, reuse, and recycling. The program shall include:

(1) a media campaign to develop and disseminate educational materials designed to establish broad public understanding and compliance with the state's waste reduction and recycling goals; and

(2) a curriculum, developed in cooperation with the commissioner of education and suitable for use in programs from kindergarten through high school, that promotes waste reduction and recycling.

(b) As part of the program, the commission may:

(1) advise and consult with individuals, businesses, and manufacturers on source reduction techniques and recycling; and

(2) sponsor or cosponsor with public and private organizations technical workshops and seminars on source reduction and recycling.

SECTION 6. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0219 to read as follows:

Sec. 361.0219. OFFICE OF WASTE EXCHANGE. (a) The office of waste exchange is an office of the commission.

(b) The office shall facilitate the exchange of solid waste, recyclable or compostable materials, and other secondary materials among persons that generate, recycle, compost, or reuse those materials, in order to foster greater recycling, composting, and reuse in the state. At least one party to such an exchange must be in the state. The office shall provide information to interested persons on arranging exchanges of these materials in order to allow greater recycling, composting, and reuse of the materials and may act as broker for exchanges of the materials if private brokers are not available.

(c) The office of waste exchange shall adopt a plan for providing to interested persons information on waste exchange and shall report to the legislature on the plan and on the state's participation in any regional or national waste exchange program. Annually the office of waste exchange shall report to the legislature on progress in implementing this section, including information on the movement and exchange of materials and the effect on recycling, composting, and reuse rates in the state.

SECTION 7. Section 361.0234, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) The assessments and rules adopted under this section and Section 361.0232 may not be applied retroactively to any application that was declared administratively and technically complete and for which public hearings had commenced before June 7, 1991.

SECTION 8. Section 361.024, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) Rules shall be adopted as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). As provided by that Act, the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice

requirements of the agency. The commission shall follow its own rules as adopted until it changes them in accordance with that Act.

SECTION 9. Subsection (a), Section 361.034, Health and Safety Code, is amended to read as follows:

(a) The commission shall submit a report to the presiding officers of the legislature and the governor not later than January 1 of each odd-numbered year. The report must include:

(1) a summary of a performance report of the imposed industrial solid waste and hazardous waste fees authorized under Subchapter D and related activities to determine the appropriateness of the fee structures;

(2) an evaluation of progress made in accomplishing the state's public policy concerning the preference of waste management methods under Section 361.023;

(3) projections of the volume of waste by type of waste, disposition of waste, and remaining capacity or capacity used for the treatment and disposal of the waste; [~~and~~]

(4) projections of the availability of adequate capacity in this state for the management of all types of hazardous waste generated within the state and a report of the amounts, types, and sources of hazardous waste imported into and exported from the state in the previous year;

(5) an evaluation of the progress made and activities engaged in consistent with the state's municipal solid waste management plan, in particular the progress toward meeting the waste reduction goal established by Section 361.0201(d);

(6) an evaluation of the progress made by local governments under the solid waste management plans;

(7) the status of state procurement under Section 361.426 of products made of recycled materials or that are reusable, including documentation of any decision not to purchase those products;

(8) the status of the governmental entity recycling program established under Section 361.425, including the status of collection and storage procedures and program evaluations required by that section;

(9) the status of the public education program described in Section 361.0202; and

(10) recommendations to the governor and to the legislature for improving the management of municipal solid waste in the state.

SECTION 10. Section 361.111, Health and Safety Code, is amended to read as follows:

Sec. 361.111. COMMISSION SHALL [~~DEPARTMENT MAY~~] EXEMPT CERTAIN MUNICIPAL SOLID WASTE MANAGEMENT FACILITIES. (a) The commission shall [~~department may~~] exempt from permit requirements a municipal solid waste management facility that[~~:~~

[~~(1)~~] is used in the transfer of municipal solid waste to a solid waste processing or disposal facility from:

(1) a municipality [~~service area~~] with a population of less than 50,000;

(2) a county with a population of less than 85,000;

(3) a facility used in the transfer of municipal solid waste that transfers or will transfer 125 tons a day or less; or

(4) a materials recovery facility that recycles for reuse more than 10 percent of its incoming nonsegregated waste stream if the remaining nonrecyclable waste is transferred to a permitted landfill not farther than 50 miles from the materials recovery facility.

(b) The facility shall comply [~~5,000 to a solid waste processing or disposal site; and~~

[~~(2) complies~~] with design and operational requirements established by commission [~~board of health~~] rule that are necessary to protect the public's health and the environment.

(c) To qualify for an exemption under this section, an applicant must hold a public meeting about the siting of the facility in the municipality or county in which the facility is or will be located.

SECTION 11. Section 363.003, Health and Safety Code, is amended to read as follows:

Sec. 363.003. FINDINGS. The legislature finds that:

(1) the growth of the state's economy and population has resulted in an increase in discarded materials;

(2) the improper management of solid waste creates hazards to the public health, can cause air and water pollution, creates public nuisances, and causes a blight on the landscape;

(3) there is increasing public opposition to the location of solid waste land disposal facilities;

(4) because some communities lack sufficient financial resources, municipal solid waste land disposal sites in the state are being improperly operated and maintained, causing potential health problems to nearby residents, attracting vectors, and creating conditions that destroy the beauty and quality of our environment;

(5) often, operational deficiencies occur at rural solid waste land disposal sites operated by local governments that do not have the funds, personnel, equipment, and technical expertise to properly operate a disposal system;

(6) many smaller communities and rural residents have no organized solid waste collection and disposal system, resulting in dumping of garbage and trash along the roadside, in roadside parks, and at illegal dump sites;

(7) combining two or more small, inefficient operations into local, regional, or countywide systems may provide a more economical, efficient, and safe means for the collection and disposal of solid waste and will offer greater opportunities for future resource recovery;

(8) there are private operators of municipal solid waste management systems with whom persons can contract or franchise their services, and many of those private operators possess the management expertise, qualified personnel, and specialized equipment for the safe collection, handling, and disposal of solid waste;

(9) technologies exist to separate usable material from solid waste and to convert solid waste to energy, and it will benefit this state to work in cooperation with private business, nonprofit organizations, and public agencies that have acquired knowledge, expertise, and technology in the

fields of energy production and recycling, reuse, reclamation, and collection of materials;

(10) the opportunity for resource recovery is diminished unless local governments can exercise control over solid waste and can enter long-term contracts to supply solid waste to resource recovery systems or to operate those systems; [~~and~~]

(11) the control of solid waste collection and disposal should continue to be the responsibility of local governments and public agencies, but the problems of solid waste management have become a matter of state concern and require state financial assistance to plan and implement solid waste management practices that encourage the safe disposal of solid waste and the recovery of material and energy resources from solid waste; and

(12) local governments should be encouraged to contract with waste management firms to meet the requirements of this chapter.

SECTION 12. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.0961 to read as follows:

Sec. 361.0961. RESTRICTIONS ON AUTHORITY OF LOCAL GOVERNMENT OR OTHER POLITICAL SUBDIVISION. (a) A local government or other political subdivision may not adopt an ordinance, rule, or regulation to:

(1) prohibit or restrict, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law;

(2) prohibit or restrict the processing of solid waste by a solid waste facility, except for a solid waste facility owned by the local government, permitted by the commission for that purpose in a manner not authorized by state law; or

(3) assess a fee or deposit on the sale or use of a container or package.

(b) This section does not prevent a local government or other political subdivision from complying with federal or state law or regulation. A local government or other political subdivision may take any action otherwise prohibited by this section in order to comply with federal requirements or to avoid federal or state penalties or fines.

(c) This section does not limit the authority of a local government to enact zoning ordinances.

SECTION 13. Section 363.062, Health and Safety Code, is amended by adding a new Subsection (d) and relettering existing Subsections (d) and (e) to read as follows:

(d) In each even-numbered year on the anniversary of the adoption of a municipal solid waste management plan, each planning region shall report to the department on the progress of the region's municipal solid waste management program and recycling activities developed under this section. The department may not require a planning region to submit to the department information previously submitted to the department by the planning region in an earlier plan or report.

(e) If the department determines that a regional solid waste management plan does not conform to the requirements adopted by the board, the department shall give written notice to the planning region of

each aspect of the plan that must be changed to conform to board requirements. After the changes have been made in the plan as provided by the department, the department shall submit the plan to the board for approval.

(f) [~~(c)~~] The board by rule shall adopt an approved regional solid waste management plan.

SECTION 14. Section 363.063, Health and Safety Code, is amended by adding a new Subsection (d) and relettering existing Subsections (d) and (e) to read as follows:

(d) In each even-numbered year on the anniversary of the adoption of a municipal solid waste management plan, each local government shall report to the department on the progress of its municipal solid waste management program and recycling activities implemented under this section. The department may not require a local government to submit to the planning region or to the department information previously submitted to the planning region or department by the local government in an earlier plan or report.

(e) If the department determines that a local solid waste management plan does not conform to the requirements adopted by the board, the department shall give written notice to the local government of each aspect of the plan that must be changed to conform to board requirements. After changes are made in the plan as requested by the department, the department shall submit the plan to the board for approval.

(f) [~~(c)~~] The board by rule shall adopt an approved local solid waste management plan.

SECTION 15. Section 363.064, Health and Safety Code, is amended to read as follows:

Sec. 363.064. CONTENTS OF REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN. A regional or local solid waste management plan must:

(1) include a description and an assessment of current efforts in the geographic area covered by the plan to minimize production of municipal solid waste, including sludge, and efforts to reuse or recycle waste;

(2) identify additional opportunities for waste minimization and waste reuse or recycling;

(3) include a description and assessment of existing or proposed community programs for the collection of household hazardous waste;

(4) make recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(5) encourage cooperative efforts between local governments and private industry in the siting of landfills for the disposal of solid waste;

(6) consider the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area; [~~and~~]

(7) allow a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction

of another local government that does not have a technically suitable site for a landfill in its jurisdiction;[.]

(8) [~~(7)~~] establish recycling rate goals appropriate to the area covered by the plan; and

(9) [~~(8)~~] recommend composting programs for yard waste and related organic wastes that may include:

(A) creation and use of community composting centers;

(B) adoption of the "Don't Bag It" program for lawn clippings developed by the Texas Agricultural Extension Service; and

(C) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch;

(10) assess the need for new waste disposal capacity;

(11) include a public education program; and

(12) include waste reduction in accordance with the goal established under Section 361.0201(d), to the extent that funds are available.

SECTION 16. The office of waste exchange created by Section 361.0219, Health and Safety Code, as added by this Act, shall adopt the plan required by that section not later than September 1, 1994.

SECTION 17. This Act does not affect the transfer of powers, duties, rights, and obligations made by Chapter 3, Acts of the 72nd Legislature, 1st Called Session, 1991.

SECTION 18. The change in law made by Section 361.024, Health and Safety Code, as amended by this Act, applies to rules in effect on or adopted on or after the effective date of this Act.

SECTION 19. This Act takes effect September 1, 1993.

SECTION 20. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1432

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 27, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1432** have

met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER	UHER
HALEY	HOLZHEAUSER
TURNER	TELFORD
SIBLEY	SAUNDERS
	B. TURNER
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2663

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 28, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2663** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER	ECKELS
MONCRIEF	CAMPBELL
HALEY	HAMRIC
BIVINS	COLEMAN
WENTWORTH	LONGORIA
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1968

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1968** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER	SAUNDERS
BROWN	WEST
WHITMIRE	KUEMPEL
HENDERSON	RAMSAY
SHELLEY	EARLEY
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1061

Senator Parker submitted the following Conference Committee Report:

Austin, Texas
May 27, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1061** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

PARKER	COUNTS
MONCRIEF	McCALL
ELLIS	PARK
WENTWORTH	GLAZE
MADLA	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the Texas Board of Chiropractic Examiners and to the regulation of the practice of chiropractic; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. (a) A Board to be known as "The Texas Board of Chiropractic Examiners" is hereby created. No member of said Board shall be a member of the faculty or Board of Trustees of any chiropractic school; and all appointments to said Board shall be subject to the confirmation of the Senate. The Texas Board of Chiropractic Examiners, which hereinafter may be referred to as "The Board," shall be composed of nine (9) members, appointed by the Governor, whose duty it shall be to carry out the purposes and enforce the provisions of this Act. Appointments to the Board shall be made without regard to the race, color, disability [~~creed~~], sex, religion, age, or national origin of the appointees.

(b) Six (6) members must be reputable practicing chiropractors who have resided in this State for a period of five (5) years preceding their appointment. Three (3) members must be representatives [~~members~~] of the general public. A person is not eligible for appointment as a public member of the Board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by the Board or receiving funds from the Board [~~that provides health care services or that sells, manufactures, or distributes health care supplies or equipment~~]; or

(3) owns or[~~,~~] controls, [~~or has,~~] directly or indirectly, more than a 10 [~~ten~~] percent [~~(10%)~~] interest in a business entity or other organization regulated by the Board or receiving funds from the Board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the Board, other than compensation or reimbursement authorized by law for Board membership, attendance, or expenses [~~that provides health care services or that sells, manufactures, or distributes health care supplies or equipment~~].

(c) Five (5) members of the Board shall constitute a quorum. No member of said Board shall be a stockholder, or have any financial interest whatsoever in any chiropractic school or college.

(d) An officer, employee, or paid consultant of a professional or trade association in the field of health care may not be a member or employee of the Board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule [~~A member or employee of the Board may~~

~~not be an officer, employee, or paid consultant of a statewide or national trade association in the health-care industry~~].

(e) A person who is the spouse of, or who is related within the first degree by affinity or within the first degree by consanguinity to, an officer, manager, or paid consultant of a professional or trade association in the field of health care may not be a Board member and may not be an employee of the Board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule [~~member or employee of the Board may not be related within the second degree by affinity or within the second degree by consanguinity, as determined under Article 5996h, Revised Statutes, to a person who is an officer, employee, or paid consultant of a statewide or national trade association in the regulated industry~~].

(f) For the purposes of Subsections (d) and (e) of this section, a professional or trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(g) A person may not serve as a member of the Board or act as the general counsel to the Board if the person [~~who~~] is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the Board [~~may not serve as a member of the Board or act as the general counsel to the Board~~].

(h) [~~(g)~~] The members of the Texas Board of Chiropractic Examiners shall be divided into three (3) classes, one, two and three, and are appointed for staggered six-year terms, with three members' terms expiring on February 1 of each odd-numbered year [~~their respective terms of office shall be determined by the Governor at the time of the first appointments hereunder~~]. Members hold office for their terms [~~six (6) years~~] and until their successors are duly appointed and qualified. In case of death or resignation of a member of the Board, the Governor shall appoint another to take his place for the unexpired term only.

(i) [~~(h)~~] The Texas Board of Chiropractic Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2005 [~~1993~~].

SECTION 2. Section 3a, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3a. (a) The Board shall prepare information of public [~~consumer~~] interest describing the [~~regulatory~~] functions of the Board and [~~describing~~] the Board's procedures by which [~~consumer~~] complaints are filed with and resolved by the Board. The Board shall make the information available to the [~~general~~] public and appropriate state agencies.

(b) The Board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone

number of the Board for the purpose of directing complaints to the Board. The Board may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated by the Board; or

(2) on a sign prominently displayed in the place of business of each individual or entity regulated by the Board.

(c) The Board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law [~~There shall at all times be prominently displayed in the place of business of each licensee regulated under this Act a sign containing the name, mailing address, and telephone number of the Board and a statement informing consumers that complaints against licensees can be directed to the Board~~].

SECTION 3. Section 3b, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3b. (a) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (b) of Section 3 of this Act [~~for appointment to the Board~~];

(2) does not maintain during [~~the~~] service on the Board the qualifications required by Subsection (b) of Section 3 of this Act [~~for appointment to the Board~~];

(3) violates a prohibition established by Subsection (d), (e), or (g) [~~(f)~~] of Section 3 of this Act; [~~or~~]

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half [~~does not attend at least one-half~~] of the regularly scheduled Board meetings that the member is eligible to attend during [~~held by the Board in~~] a calendar year unless the absence is excused by majority vote[~~; excluding meetings held while the person was not a member~~] of the Board.

(b) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a Board member exists [~~of the Board existed~~].

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the governor and the attorney general that a potential ground for removal exists.

SECTION 4. Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended by adding Section 3c to read as follows:

Sec. 3c. (a) Each Board member shall comply with the Board member training requirements established by any other state agency that is given authority to establish the requirements for the Board.

(b) The Board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or

employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SECTION 5. Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended by adding Section 3d to read as follows:

Sec. 3d. The Board shall develop and implement policies that clearly define the respective responsibilities of the Board and the staff of the Board.

SECTION 6. Section 4, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. (a) Each member of the Texas Board of Chiropractic Examiners shall qualify by taking the Constitutional Oath. At the first meeting of said Board after each biennial appointment, the Board shall elect [~~a president,~~] a vice-president and a secretary-treasurer from its members. The governor shall designate a member of the Board to act as the president of the Board at the pleasure of the governor. Regular meetings shall be held to examine applicants and for the transaction of business at least twice a year at such time and place as may be determined by the Board. Special meetings may be held on a call of three (3) members of the Board. The Board may prescribe rules, regulations and bylaws in harmony with the provisions of this Act for its own proceedings and government for the examination of applicants for license to practice chiropractic. The secretary-treasurer shall make and file a surety bond in favor of the Texas Board of Chiropractic Examiners in the sum of not less than Five Thousand Dollars ($5,000) conditioned that he will faithfully discharge the duties of his office.

(b) The Board [~~Board/commission~~] is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) [~~If the appropriate standing committees of both houses of the Legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Board/commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board/commission receives the committee's statements.~~

[~~(d)~~)] The Board shall adopt guidelines for educational preparation [~~and acceptable practices~~] for all aspects of the practice of chiropractic. The Board may not adopt a rule relating to the meaning of the practice of chiropractic under this Act except for:

(1) a rule relating to an adjustment, manipulation, or other procedure directly related to improving the subluxation of the spine or of the musculoskeletal system as it directly relates to improving the subluxation of the spine; or

(2) a rule that defines an unacceptable practice of chiropractic and provides for a penalty or sanction under this Act.

(d) The [~~(c) On or before January 1 of each year, the~~] Board shall file annually with the Governor and the presiding officer of each house of the Legislature a complete and detailed written report accounting for all funds received and disbursed by the Board during [~~in~~] the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(e) [~~(f)~~] The executive director or the executive director's designee [~~Board~~] shall develop an intra-agency [~~intraagency~~] career ladder program. The program shall require intra-agency posting of all[~~, one part of which shall be the intraagency posting of each job opening with the Board in a~~] nonentry level positions concurrently with any public posting [~~position. The intraagency posting shall be made at least ten (10) days before any public posting is made~~].

(f) [~~(g)~~] The executive director or the executive director's designee [~~Board~~] shall develop a system of annual performance evaluations [~~of the Board's employees based on measurable job tasks~~]. All [~~Any~~] merit pay for [~~authorized by the~~] Board employees must [~~shall~~] be based on the system established under this subsection.

SECTION 7. Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended by adding Sections 4c and 4d to read as follows:

Sec. 4c. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments;

(2) a comprehensive analysis of the Board work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the Board work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underutilization.

(b) A policy statement prepared under Subsection (a) of this section must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1) of this section, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b) of this section. The report may be made separately or as part of other biennial reports to the legislature.

Sec. 4d. (a) The Board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board.

(b) The Board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the Board's programs. The Board shall also comply with federal and state laws for program and facility accessibility.

SECTION 8. Section 8a, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended by amending Subsections (a) and (e) and adding Subsection (f) to read as follows:

(a) Practicing chiropractic as defined in Section 1 of this Act without an annual renewal [~~registration~~] receipt for the current year as provided herein shall have the same force and effect and be subject to all penalties of practicing chiropractic without a license.

(e) If a person's license has been expired for one (1) year or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. However, the Board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the Board a fee that is equal to the examination fee for the license.

(f) At least 30 days before the expiration of a person's license, the Board shall send written notice of the impending license expiration to the person at the licensee's last known address according to the records of the Board.

SECTION 9. Section 8b, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8b. (a) The provisions of this Act shall apply to all persons licensed by the Texas Board of Chiropractic Examiners and the annual renewal [~~registration~~] fee shall apply to all persons licensed by the Texas Board of Chiropractic Examiners, whether or not they are practicing within the borders of this State. [~~As a prerequisite to the annual registration or renewal and before the chiropractic registration or renewal may be issued, the licensee shall present to the Board satisfactory evidence that in the year preceding the application for renewal said licensee attended two (2) days of continuing educational courses approved by the Board. A person licensed by examination during the twelve (12) months immediately preceding the January 1st renewal date shall be granted renewal without attending the educational programs. Unless the exemption provided by this subsection applies, if a licensee fails to meet the continuing education requirement the Board may place the licensee on probation for a period not to exceed twelve (12) months. The Board by rule may set conditions for reinstatement of a license during the probationary period. If the licensee fails to satisfy the requirements for reinstatement, the licensee may obtain a new license only by complying with the requirements and procedures for obtaining an original license.~~]

(b) The Board shall notify licensees of approved continuing education courses at least annually.

(c) The Board by rule shall adopt requirements for mandatory continuing education for licensees under this Act in subjects pertaining to the practice of chiropractic. The Board by rule shall establish a minimum number of hours of continuing education required to renew a license. The Board may assess the continuing education needs of licensees and may require licensees to attend continuing education courses specified by the Board. The Board by rule shall develop a process to evaluate and approve continuing education courses.

(d) The Board shall identify the key factors for the competent performance by a licensee of the licensee's professional duties. The Board shall adopt a procedure to assess a licensee's participation and performance in continuing education programs.

SECTION 10. Section 8c, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8c. The Board by rule may adopt a system under which licenses [~~registrations~~] expire on various dates during the year. For the year in which the license expiration date is changed, license [~~registration~~] fees payable on January 1 shall be prorated on a monthly basis so that each licensee [~~registrant~~] shall pay only that portion of the license [~~registration~~] fee that [~~which~~] is allocable to the number of months during which the license [~~registration~~] is valid. On renewal of the license [~~registration~~] on the new expiration date, the total license renewal [~~registration~~] fee is payable.

SECTION 11. Section 8d, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) Rules adopted under this section shall include a time limit for a licensee to remain on inactive status.

SECTION 12. Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended by adding Section 8e to read as follows:

Sec. 8e. The Board by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a person who holds a temporary license.

SECTION 13. Section 9, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. (a) The Texas Board of Chiropractic Examiners may upon payment by an applicant of a fee grant a provisional license to practice chiropractic to an applicant who presents proof of a current license in another state, the District of Columbia, a territory of the United States, or a foreign country that maintains professional standards considered by the Board to be equivalent to those set forth in this Act [~~licentiates of other states or territories having requirements and practices equivalent to those established by the laws of this State, provided said applicant has continuously practiced chiropractic for not less than five years preceding the applicant's application to the Board~~]. Applications for license under the provisions of this Section shall be in writing, and upon a form to be

prescribed by the Texas Board of Chiropractic Examiners. Said application shall be accompanied by a license, or a certified copy of license to practice chiropractic, lawfully issued to the applicant, upon examination, by some other state, the District of Columbia, a ~~[or]~~ territory of the United States, or a foreign country. Said application shall also be accompanied by an affidavit made by the president or secretary of the Board of Chiropractic Examiners which issued the said license, or by a legally constituted chiropractic registration officer of the state, District of Columbia, ~~[or]~~ territory, or foreign country by which the license was granted, and on which the application for chiropractic registration in Texas is based, reciting that the accompanying license has not been cancelled or revoked, and that the statement or qualifications made in the application for chiropractic license in Texas is true and correct. Applicants for license under the provisions of this Section shall subscribe to an oath in writing before an officer authorized by law to administer oaths, which shall be a part of said application, stating that the license under which the applicant practiced chiropractic in the State, the District of Columbia, the foreign country, or the territory from which the applicant removed, was at the time of such removal in full force, and not suspended or cancelled. Said application shall also state that the applicant is the identical person to whom the said certificate was issued, and that no proceeding has been instituted against the applicant for the cancellation of said certificate to practice chiropractic in the State, District of Columbia, foreign country, or territory by which the same was issued; and that no prosecution is pending against the applicant in any State or Federal Court for any offense which, under the law of Texas is a felony. An applicant for a provisional license under this Section must:

(1) be licensed in good standing as a chiropractor at least two years in another state, the District of Columbia, a foreign country, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this Act;

(2) have passed a national or other examination recognized by the Board relating to the practice of chiropractic; and

(3) be sponsored by a person licensed by the Board under this Act with whom the provisional licensee may practice under this Section.

(b) An applicant for a provisional license may be excused from the requirement of Subsection (a)(3) of this Section if the Board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) A provisional license is valid until the date the Board approves or denies the provisional licensee's application for a license. The Board shall issue a license under this Act to the holder of a provisional license under this Section if:

(1) the provisional licensee passes the part of the examination under Section 10 of this Act that pertains to the applicant's knowledge and understanding of the laws and regulations relating to the practice of chiropractic in this State;

(2) the Board verifies that the provisional licensee has the academic and experience requirements for a license under this Act; and

(3) the provisional licensee satisfies any other license requirements under this Act.

(d) The Board must complete the processing of a provisional licensee's application for a license not later than the 180th day after the date the provisional license is issued. The Board may extend the 180-day limit if the results on an examination have not been received by the Board.

SECTION 14. Subsections (c) and (e), Section 10, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) If any applicant, because of failure to pass the required examination, shall be refused a license, he or she[~~, at such time as the Texas Board of Chiropractic Examiners may fix, not exceeding one (1) year,~~] shall be permitted to take a subsequent examination, upon such subjects required in the original examination as the Board may prescribe. The Board by rule shall establish the conditions under which an applicant who fails the licensing examination may retake the examination and the number of times the applicant may retake the examination. The Board may require an applicant to fulfill additional educational requirements [~~except that the applicant shall not be required to take a re-examination on subjects in which he has made a grade of seventy-five per cent (75%) or more, provided the applicant shall apply for re-examination within one (1) year~~]. In the event satisfactory grades shall be made in the subjects prescribed and taken on such re-examination, the Board shall grant to the applicant a license to practice chiropractic. The Board shall determine the grade to be given the examinees on the answers turned in on the subjects of complete and partial examination, and its decision thereupon shall be final.

(e) Not later than the 30th day [~~Within thirty (30) days~~] after the day on which a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination not later than the 14th day [~~within two (2) weeks~~] after the day that the Board receives the results from the testing service. If the notice of the examination results graded or reviewed by a national testing service will be delayed for longer than 90 [~~ninety (90)~~] days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th [~~ninetieth (90th)~~] day.

SECTION 15. Subsection (b), Section 11, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The Board by rule shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this Act. The fees set by the Board may be adjusted so that the total fees collected shall be sufficient to meet the expenses of administering this Act. The Board may not set a fee for an amount less than the amount of that fee on September 1, 1993 [~~for the administration of this Act, not to exceed:~~

[~~(1) annual renewal: $200;~~

[~~(2) reciprocal license: $200;~~

[~~(3) examination fee: $120;~~
[~~(4) reexam fee: $75; and~~
[~~(5) verification of licensing requirements fee: $75~~].

SECTION 16. Section 12, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. All examinations for license to practice chiropractic shall be conducted in writing in the English language and in such manner as to be entirely fair and impartial to all applicants. The Board shall have the examination validated by an independent testing entity. The Board may use an examination that it purchases from a national testing center only if the national testing center has the examination validated by an independent testing professional. All applicants shall be known to the examiners only by numbers, without names or other method of identification on examination papers by which members of the Board may be able to identify such applicants, or examinees, until after the general averages of the examinees' numbers in the class have been determined, and license granted or refused. Examinations shall be conducted on practical and theoretical chiropractic and in the subjects of anatomy-histology, chemistry, bacteriology, physiology, symptomatology, pathology and analysis of the human spine, and hygiene and public health. Upon satisfactory examination, conducted as aforesaid under the rules of the Board, which shall consist of an average grade of not less than seventy-five per cent (75%) in any one subject, applicants shall be granted license to practice chiropractic. All questions and answers, with the grades attached, authenticated by the signature of the examiner, shall be preserved in the executive office of the Board for one (1) year. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the Board, and signed by all members of the Board, or a quorum thereof.

SECTION 17. Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended by adding Section 12a to read as follows:

Sec. 12a. The Board shall adopt rules for the licensing and regulation of chiropractic facilities as necessary to protect the public health, safety, and welfare. A rule adopted by the Board under this section must:

(1) specify the licensing requirements for a chiropractic facility;

(2) set out the structure of the facility licensing program; and

(3) provide that the Board shall issue one facility license to an owner of a chiropractic facility without regard to the number of chiropractic facilities owned by the owner.

SECTION 18. Section 14, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. (a) The Texas Board of Chiropractic Examiners shall revoke or suspend a license, place on probation a person whose [~~probate a~~] license has been suspended [~~suspension~~], or reprimand a licensee, or may impose an administrative penalty, for a violation [~~any violations~~] of this [~~the~~] Act

or a rule [~~rules~~] of the Board. If a license suspension is probated, the Board may require the licensee to:

(1) report regularly to the Board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the Board; or

(3) continue or review continuing professional education until the licensee attains a degree of skill satisfactory to the Board in those areas that are the basis of the probation.

(b) The Board by rule shall develop a system for monitoring the compliance with the requirements of this Act of license holders who are the subject of disciplinary action. Rules adopted under this subsection shall include procedures for monitoring a license holder who is ordered by the Board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who are the subject of disciplinary action and who present a continuing threat to the public welfare through the practice of chiropractic.

(c) In addition to the other disciplinary actions authorized by this Act, the Board may require that a licensee who violates this Act participate in continuing education programs. The Board shall specify the continuing education programs that may be attended and the number of hours that must be completed by an individual licensee to fulfill the requirements of this section.

(d) The Board by rule shall adopt a schedule of the maximum amount of sanctions that may be assessed against a licensee for each category of violation of this Act. In establishing the schedule of sanctions or in imposing the amount of an administrative penalty under this Act, the Board shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, or gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(e) The schedule of sanctions shall be used by the State Office of Administrative Hearings for any sanction imposed as the result of a hearing conducted by that office.

(f) [~~(b)~~] The Board shall keep an information file about each complaint filed with the Board [~~relating to a licensee~~]. The Board's information file shall be kept current and contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(g) [~~(c)~~] If a written complaint is filed with the Board that the Board has authority to resolve [~~relating to a licensee~~], the Board, at least [~~as frequently as~~] quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(h) [~~(d)~~] Any person whose license to practice chiropractic has been cancelled, revoked or suspended or on whom an administrative penalty has been imposed by the Board may take an appeal to any of the district courts in the county of his residence, but the decision of the Board shall not be enjoined or stayed except on application to such district court after notices to the Board.

(i) [~~(e)~~] Upon application, the Board may reissue a license to practice chiropractic to a person whose license has been cancelled or suspended, but such application, in the case of cancellation or revocation, shall not be made prior to one (1) year after the cancellation or revocation, and shall be made in such manner and form as the Board may require.

(j) [~~(f)~~] If the Board proposes to refuse a person's application for a license, to suspend or revoke a person's license, or to probate or reprimand a person, the person is entitled to a hearing before the Board.

(k) [~~(g)~~] Disciplinary proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(l) The Board by rule shall adopt a form to standardize information concerning complaints made to the Board. The Board by rule shall prescribe information to be provided to a person when the person files a complaint with the Board.

(m) The Board shall provide reasonable assistance to a person who wishes to file a complaint with the Board.

SECTION 19. Section 14a, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14a. The Texas Board of Chiropractic Examiners may refuse to admit persons to its examinations and may cancel, revoke or suspend licenses or place licensees upon probation for such length of time as may be deemed proper by the Board for any one or more of the following causes:

1. For failure to comply with, or the violation of, any of the provisions of this Act or of a rule adopted under this Act;

2. If it is found that said person or persons are in any way guilty of deception or fraud in the practice of chiropractic;

3. The presentation to the Board or use of any license, certificate or diploma, which was illegally or fraudulently obtained, or the presentation to the Board of any untrue statement or any document or testimony which was illegally practiced in passing the examination;

4. Conviction of a crime of the grade of a felony, or one which involves moral turpitude, or the procuring or assisting in the procuring of an abortion;

5. Grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public, habits of intemperance or drug addiction, or other habits calculated in the opinion of the Board to endanger the lives of patients;

6. The use of any advertising statement of a character to mislead or deceive the public;

7. Employing or associating with, directly or indirectly, any person who, during the period of such employment, commits any act constituting the practice of chiropractic when such person is not licensed to do so;

8. The advertising of professional superiority, or the advertising of the performance of professional services in a superior manner;

9. The purchase, sale, barter, use, or any offer to purchase, sell, barter or use, any chiropractic degree, license, certificate, or diploma, or transcript of license, certificate, or diploma in or incident to an application to the Board of Chiropractic Examiners for license to practice chiropractic;

10. Altering with fraudulent intent any chiropractic license, certificate or diploma, or transcript of chiropractic license, certificate or diploma;

11. The impersonation of, or acting as proxy for, another in any examination required by this Act for a chiropractic license;

12. The impersonation of a licensed practitioner, or the permitting or allowing another to use his license or certificate to practice chiropractic as defined by statute by a licensed practitioner;

13. Proof of insanity of the holder of a certificate, as adjudged by the regularly constituted authorities;

14. Failure to use proper diligence in the practice of chiropractic by the holder of a certificate, or grossly inefficient practice of chiropractic;

15. Failing to clearly differentiate a chiropractic office or clinic from any other business or enterprise;

16. Personally soliciting patients, or causing patients to be solicited, by the use of case histories of patients of other chiropractors; [~~or~~]

17. Using an accident report prepared by a peace officer in a manner prohibited by Section 38.12, Penal Code, for the purpose of soliciting patients; or

18. If, when uninvited, a licensee or person designated, contracted or paid by licensee directly canvasses, drums, secures or solicits by phone, mail or in person patients or potential patients who, because of their particular circumstances, are vulnerable to undue influence. Circumstances in which patients or potential patients may be considered to be vulnerable to undue influence include but are not limited to:

a. when a person is known to the licensee to have recently been involved in a motor vehicle accident;

b. when a person is known to the licensee to have recently been involved in a work-related accident; or

c. when a person is known to the licensee to have recently been injured by another person or as a result of another person's actions.

SECTION 20. Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended by adding Sections 14c, 14d, and 14e to read as follows:

Sec. 14c. (a) The Board shall appoint an enforcement committee to oversee and conduct the investigation of complaints filed with the Board under this Act and to perform other duties related to enforcement as directed by the Board. The enforcement committee is composed of:

(1) two or more Board members, at least one of whom is a doctor of chiropractic and at least one of whom is a representative of the general public;

(2) the executive director; and

(3) a representative of the attorney general's office.

(b) The Board shall adopt rules concerning the investigation of a complaint filed with the Board. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the Board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the Board to obtain the services of a private investigator.

(c) The Board shall dispose of all complaints in a timely manner. The Board shall establish a time line for conducting each phase of a complaint that is under the control of the Board not later than the 30th day after the date the complaint is received by the Board. The time line shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the time line must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(d) The executive director of the Board shall notify the Board of a complaint that extends beyond the time prescribed by the Board for resolving the complaint so that the Board may take necessary action on the complaint.

Sec. 14d. (a) The Board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.

(b) Rules adopted under this section must provide the complainant and the licensee an opportunity to be heard and must require the presence of a representative of the office of the attorney general or the Board's legal counsel to advise the Board or Board's employees.

Sec. 14e. (a) If the enforcement committee determines that a violation of this Act or a rule or order adopted under this Act has occurred it may

issue to the Board a report that states the facts on which the determination is based and the enforcement committee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the executive director shall give written notice of the report to the person. The notice shall be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the enforcement committee or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(d) If the person accepts the determination and recommended penalty of the enforcement committee, the Board by order shall approve the determination and impose the recommended penalty.

(e) If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the Board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the Board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(f) The notice of the Board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the order.

(g) Within 30 days after the date the Board's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(h) Within the 30-day period, a person who acts under Subsection (g)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the Board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(i) An executive director who receives a copy of an affidavit under Subsection (h)(2) of this section may, at the direction of the enforcement committee, file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(j) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may, at the direction of the enforcement committee, refer the matter to the attorney general for collection of the amount of the penalty.

(k) Judicial review of the order of the Board:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) is under the substantial evidence rule.

SECTION 21. Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended by adding Sections 19a and 19b to read as follows:

Sec. 19a. (a) The Board may impose an administrative penalty against a person licensed or regulated under this Act who violates this Act or a rule or order adopted under this Act. The penalty for a violation may be in an amount not to exceed $1,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) A person who violates this Act or a rule adopted by the Board under this Act is liable to the state for a civil penalty of $1,000 for each day of violation. At the request of the Board, the attorney general shall bring an action to recover a civil penalty authorized under this subsection.

(c) If a court sustains the occurrence of the violation after the court reviews the order of the Board imposing an administrative penalty, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty. If a court does not sustain the occurrence of the violation, the court shall order that no administrative penalty is owed.

(d) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the administrative penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the administrative penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the administrative penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the administrative penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(e) An administrative penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund. The Board may retain five percent of a penalty collected under this section to finance a Board-approved peer assistance program for chiropractors.

(f) All proceedings under this section other than a proceeding to collect a civil penalty are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

Sec. 19b. (a) The enforcement committee appointed under Subsection (a) of Section 14c of this Act on an emergency basis may temporarily suspend the license of a licensee under this Act if the enforcement committee determines from the evidence or information presented to the committee that the continued practice by the licensee constitutes a continuing or imminent threat to the public welfare.

(b) A temporary suspension authorized under Subsection (a) of this section may also be ordered on a vote of two-thirds of the Board.

(c) A license temporarily suspended under this section may be suspended without notice or hearing if, at the time the suspension is ordered, a hearing on whether disciplinary proceedings under this Act should be initiated against the licensee is scheduled to be held not later than the 14th day after the date of the suspension. A second hearing on the suspended license shall be held not later than the 60th day after the date the suspension was ordered. If the second hearing is not held in the time required by this subsection, the suspended license is automatically reinstated.

(d) The Board by rule shall adopt procedures for the temporary suspension of a license under this section.

SECTION 22. Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended by adding Section 1b to read as follows:

Sec. 1b. (a) Communications between one licensed to practice chiropractic, relative to or in connection with any professional services as a chiropractor to a patient, are confidential and privileged and may not be disclosed except as provided in this section.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a chiropractor that are created or maintained by a chiropractor

are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this section continue to apply to confidential communications or records concerning any patient irrespective of when the patient received the services of a chiropractor.

(e) The privilege of confidentiality may be claimed by the patient or chiropractor acting on the patient's behalf.

(f) The chiropractor may claim the privilege of confidentiality, but only on behalf of the patient. The authority to do so is presumed in the absence of evidence to the contrary.

(g) Exceptions to confidentiality or privilege in court or administrative proceedings exist:

(1) when the proceedings are brought by the patient against a chiropractor, including but not limited to malpractice proceedings, and any criminal or license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claims or defense of a chiropractor;

(2) when the patient or someone authorized to act on the patient's behalf submits a written consent to the release of any confidential information, as provided in Subsection (j) of this section;

(3) when the purpose of the proceedings is to substantiate and collect on a claim for chiropractic services rendered to the patient;

(4) in any civil litigation or administrative proceeding, if relevant, brought by the patient or someone on his behalf if the patient is attempting to recover monetary damages for any physical or mental condition including death of the patient; any information is discoverable in any court or administrative proceeding in this state if the court or administrative body has jurisdiction over the subject matter, pursuant to rules of procedure specified for the matters;

(5) in any disciplinary investigation or proceeding of a chiropractor conducted under or pursuant to this Act, provided that the Board shall protect the identity of any patient whose chiropractic records are examined, except for those patients covered under Subdivision (1) of this subsection or those patients who have submitted written consent to the release of their chiropractic records as provided by Subsection (j) of this section;

(6) in any criminal investigation of a chiropractor in which the Board is participating or assisting in the investigation or proceeding by providing certain records obtained from the chiropractor, provided that the Board shall protect the identity of any patient whose records are provided in the investigation or proceeding, except for those patients covered under Subdivision (1) of this subsection or those patients who have submitted written consent to the release of their chiropractic records as provided by

Subsection (j) of this section; this subsection does not authorize the release of any confidential information for the purpose of instigating or substantiating criminal charges against a patient; and

(7) in any criminal prosecution where the patient is a victim, witness, or defendant; records are not discoverable until the court in which the prosecution is pending makes an in camera determination as to the relevancy of the records or communications or any portion thereof; such determination shall not constitute a determination as to the admissibility of such records or communications or any portion thereof.

(h) Exceptions to the privilege of confidentiality, in other than court or administrative proceedings, allowing disclosure of confidential information by a chiropractor, exist only for the following:

(1) governmental agencies if the disclosures are required or permitted by law, provided that the agency shall protect the identity of any patient whose chiropractic records are examined;

(2) medical or law enforcement personnel if the chiropractor determines that there is a probability of imminent physical injury to the patient, to himself, or to others or if there is a probability of immediate mental or emotional injury to the patient;

(3) qualified personnel for the purpose of management audits, financial audits, program evaluations, or research, but the personnel may not identify, directly or indirectly, a patient in any report of the research, audit, or evaluation or otherwise disclose identity in any manner;

(4) those parts of the records reflecting charges and specific services rendered when necessary in the collection of fees for services provided by a chiropractor or chiropractors or professional associations or other entities qualified to render or arrange for services;

(5) any person who bears a written consent of the patient or other person authorized to act on the patient's behalf for the release of confidential information, as provided by Subsection (j) of this section;

(6) individuals, corporations, or governmental agencies involved in the payment or collection of fees for services rendered by a chiropractor;

(7) other chiropractors and personnel under the direction of the chiropractor who are participating in the diagnosis, evaluation, or treatment of the patient; or

(8) in any official legislative inquiry regarding state hospitals or state schools, provided that no information or records which identify a patient or client shall be released for any purpose unless proper consent to the release is given by the patient, and only records created by the state hospital or school or its employees shall be included under this subsection.

(i) Exceptions to the confidentiality privilege in this Act are not affected by any statute enacted before the effective date of this Act.

(j)(1) Consent for the release of confidential information must be in writing and signed by the patient; a parent or legal guardian if the patient is a minor; a legal guardian if the patient has been adjudicated incompetent to manage his personal affairs; an attorney ad litem appointed for the patient, as authorized by the Texas Mental Health Code (Subtitle C, Title 7, Health and Safety Code); the Persons with Mental Retardation Act (Subtitle D, Title 7, Health and Safety Code); Subtitle B, Title 6, Health

and Safety Code; Subtitle E, Title 7, Health and Safety Code; Chapter 5, Texas Probate Code; and Chapter 11, Family Code; or other applicable provision or a personal representative if the patient is deceased, provided that the written consent specifies the following:

(A) the information records to be covered by the release;

(B) the reasons or purposes for the release; and

(C) the person to whom the information is to be released.

(2) The patient or other person authorized to consent has the right to withdraw his consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the written notice of the withdrawal.

(3) Any person who receives information made confidential by this Act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

(k) A chiropractor shall furnish copies of chiropractic records requested or a summary or narrative of the records pursuant to a written consent for release of the information as provided by Subsection (j) of this section, except if the chiropractor determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, and the chiropractor may delete confidential information about another person who has not consented to the release. The information shall be furnished by the chiropractor within a reasonable period of time, and reasonable fees for furnishing the information shall be paid by the patient or someone on the patient's behalf. In this subsection, "chiropractic records" means any records pertaining to the history, diagnosis, treatment, or prognosis of the patient.

(l) "Patient" for the purposes of this section means any person who consults or is seen by a person licensed to practice chiropractic to receive chiropractic care.

SECTION 23. (a) The changes in law made by this Act in the qualifications of, and the prohibitions applying to, members of the Texas Board of Chiropractic Examiners do not affect the entitlement of a member serving on the board immediately before the effective date of this Act to continue to carry out the functions of the board for the remainder of the member's term. The changes in law apply only to a member appointed on or after the effective date of this Act. This Act does not prohibit a person who is a member of the board on the effective date of this Act from being reappointed to the board if the person has the qualifications required for a member under Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), as amended by this Act.

(b) The changes in law made by this Act relating to an administrative penalty or civil penalty apply only to a violation of Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), or a rule or order adopted by the Texas Board of Chiropractic Examiners that occurs on or after the effective date of this Act. A violation occurs on or after the effective date of this Act only if each element of the violation occurs on or after that date. A violation that

occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

(c) Unless the rule has been readopted under Subsection (d) of this section, a rule of the Texas Board of Chiropractic Examiners adopted after December 31, 1988, expires on September 1, 1994, except for a rule relating to:

(1) procedures for the conduct of a contested case held under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes); or

(2) internal operating procedures.

(d) The board shall initiate rulemaking proceedings to review and, if necessary, to amend or readopt a rule scheduled for expiration as provided by Subsection (c) of this section. The rulemaking provisions of Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) apply to the amendment or readoption of a rule under this subsection.

(e) Not later than December 1, 1994, the Texas Board of Chiropractic Examiners shall submit a report to the governor, lieutenant governor, and speaker of the house of representatives on the results of the review and rulemaking actions undertaken under Subsection (d) of this section.

SECTION 24. This Act takes effect September 1, 1993.

SECTION 25. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1064

Senator Ratliff submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1064** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

RATLIFF	ERICKSON
HALEY	GRUSENDORF
BIVINS	JOHNSON
SHAPIRO	DEAR
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1058

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 29, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1058** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ARMBRISTER	SAUNDERS
HALEY	BOMER
MONTFORD	OLIVEIRA
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to fees imposed and collected by agencies of state and local government.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 118.052, Local Government Code, is amended to read as follows:

Sec. 118.052. FEE SCHEDULE. Each clerk of a county court shall collect the following fees for services rendered to any person:

(1) CIVIL COURT ACTIONS

(A) Filing of Original Action (Sec. 118.053):

(i) Garnishment after judgment $15.00

(ii) All others $40.00

(B) Filing of Action Other than Original (Sec. 118.054) $30.00

(C) Services Rendered After Judgment in Original Action (Sec. 118.0545):

(i) Abstract of judgment $5.00

(ii) Execution, order of sale, writ, or other process $5.00

(2) PROBATE COURT ACTIONS
(A) Probate Original Action (Sec. 118.055):
(i) Probate of a will with independent executor, administration with will attached, administration of an estate, guardianship or receivership of an estate, or muniment of title $35.00
(ii) Community survivors $20.00
(iii) Small estates $10.00
(iv) Affidavits of heirship $10.00
(v) Mental health or chemicaldependency services $40.00
(vi) Additional, special fee (Sec. 118.064) ..... $ 3.00
(B) Services in Pending Probate Action (Sec. 118.056):
(i) Filing and recording a document:
for the first page ..... $ 3.00
for each additional page or part of a page ..... $ 2.00
(ii) Approving and recording bond ..... $ 3.00
(iii) Administering oath ..... $ 2.00
(C) Adverse Probate Action (Sec. 118.057) $35.00
(D) Claim Against Estate (Sec. 118.058) ..... $ 2.00
(3) OTHER FEES
(A) Issuing Document Requiring a Return, No Pending Action (Sec. 118.059):
original document and one copy ..... $ 4.00
each additional set of an original and one copy .... $ 4.00
(B) Certified Papers, No Return Required (Sec. 118.060):
for the clerk's certificate ..... $ 1.00
plus a fee per page or part of a page of ..... $ 1.00
(C) Letters Testamentary, Letter of Guardianship, Letter of Administration, or Abstract of Judgment (Sec. 118.061) ..... $ 2.00
(D) Safekeeping of Wills (Sec. 118.062) ..... $ 5.00
(E) Mail Service of Process (Sec. 118.063) .... same as sheriff
(F) Records Management and Preservation Fee $5.00

SECTION 2. Subchapter C, Chapter 118, Local Government Code, is amended by adding Section 118.0546 to read as follows:

Sec. 118.0546. RECORDS MANAGEMENT AND PRESERVATION FEE—CIVIL CASES. (a) The fee for "Records Management and Preservation" under Section 118.052 is for the records management and preservation services performed by the county as required by Chapter 203.

(b) The fee shall be assessed as cost and must be paid at the time of filing any civil case or ancillary pleading thereto.

(c) The fee shall be placed in a special fund to be called the records management and preservation fund.

(d) The fee shall be used only for records management and preservation purposes in the county. No expenditure may be made from this fund without prior approval of the commissioners court.

SECTION 3. Subchapter C, Chapter 118, Local Government Code, is amended by adding Section 118.0645 to read as follows:

Sec. 118.0645. RECORDS MANAGEMENT AND PRESERVATION FEE—PROBATE CASES. (a) The fee for "Records Management and

Preservation" under Section 118.052 is for the records management and preservation services performed by the county as required by Chapter 203.

(b) The fee shall be assessed as cost and must be paid at the time of filing any probate case or adverse probate action.

(c) The fee shall be placed in a special fund entitled records management and preservation fund.

(d) The fee shall be used only for records management and preservation purposes in the county as required by Chapter 203. No expenditure may be made from this fund without prior approval of the commissioners court.

SECTION 4. Section 203.003, Local Government Code, is amended to read as follows:

Sec. 203.003. DUTIES OF COMMISSIONERS COURT. The commissioners court of each county shall:

(1) promote and support the efficient and economical management of records of all elective offices in the county to enable elected county officers to conform to this subtitle and rules adopted under it;

(2) facilitate the creation and maintenance of records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of each elective office and designed to furnish the information necessary to protect the legal and financial rights of the local government, the state, and the persons affected by the activities of the local government;

(3) facilitate the identification and preservation of the records of elective offices that are of permanent value; [~~and~~]

(4) facilitate the identification and protection of the essential records of elective offices;

(5) establish a county clerk records management and preservation fund for fees subject to Section 118.0216 and approve in advance any expenditures from the fund; and

(6) establish a records management and preservation fund for the records management and preservation fees authorized under Sections 118.052, 118.0546, and 118.0645, Section 51.317, Government Code, and Article 102.005(d), Code of Criminal Procedure, and approve in advance any expenditures from the fund, which may be spent only for records management preservation or automation purposes in the county.

SECTION 5. Section 51.317, Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The fees are:

(1) for filing a suit, including an appeal from an inferior court $45

(2) for filing a cross-action, intervention, contempt action, or motion for new trial $15

(3) for issuing a subpoena, including one copy, when requested at the time a suit or action is filed ..... $ 4

(4) for issuing a citation or other writ or process not otherwise provided for, including one copy, when requested at the time a suit or action is filed ..... $ 8

(5) for issuing an additional copy of a process not otherwise provided for, when requested at the time a suit or action is filed ..... $ 4

(6) for the records management and preservation fund..... $ 5.

(c) The district clerk, after collecting a fee under Subsection (b)(6), shall pay the fee to the county treasurer, or to an official who discharges the duties commonly delegated to the county treasurer, for deposit in the records management and preservation fund.

SECTION 6. Article 102.005, Code of Criminal Procedure, is amended by adding Subsection (d) to read as follows:

(d) A defendant convicted of an offense in a county court, a county court at law, or a district court shall pay a fee of $10 for records management and preservation services performed by the county as required by Chapter 203, Local Government Code. The fee shall be collected and distributed by the clerk of the court in the same manner as fees are collected and distributed under Section 51.317(c), Government Code. The fee received by a county shall be placed in a special fund to be called the records management and preservation fund. The fee shall be used only for records management and preservation purposes in the county as required by Chapter 203, Local Government Code. No expenditures may be made from this fund without prior approval of the commissioners court.

SECTION 7. Section 431.241, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) The department may assess a fee for the issuance of a certificate of free sale and another certification issued under this chapter. The board by rule shall set each fee in an amount sufficient to recover the cost to the department of issuing the particular certificate.

SECTION 8. Section 3, Article 21.60, Insurance Code, is amended to read as follows:

Sec. 3. ADMINISTRATION AND ENFORCEMENT. (a) The board shall administer and enforce this article. The board shall establish reasonable and necessary fees in an amount not to exceed $20 per year for each amusement ride covered by this Act.

(b) For purposes of establishing fees under this section, an amusement ride that consists of two or more self-propelled, four-wheeled vehicles designed to be operated independently and to carry fewer than three persons, including vehicles known as go-carts, is a single amusement ride.

(c) Funds raised through said fees shall be deposited in the State Treasury and shall be credited to the account of the board for administration of this Act.

SECTION 9. Subsection (a), Section 11A, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Each of the following fees imposed by or under another section of this Act is increased by $200:

(1) fee for filing an original application for an individual [a] real estate broker license; and

(2) fee for annual renewal of an individual [a] real estate broker license.

SECTION 10. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect immediately.

(b) Sections 1 through 7 of this Act take effect September 1, 1993.

(c) Section 8 of this Act takes effect January 1, 1994.

SECTION 11. The changes in law made by this Act in the amount or application of a fee apply only to a fee that becomes due on or after the effective date of the change and, as applicable, the effective date of a rule adopted under the change. A fee that became due before the effective date of the change in law made by this Act in the fee is governed by the law as it existed when the fee became due, and the former law is continued in effect for that purpose.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

CONGRATULATORY RESOLUTIONS

H.C.R. 118 - (Zaffirini): Commending Joyce Sparks and other staff of the Texas Department of Protective and Regulatory Services for their assistance during the Branch Davidian crisis.

H.C.R. 131 - (Whitmire): Designating the day after sine die adjournment of the regular session as Texas Smile Day.

H.C.R. 167 - (Whitmire): Commending the Reverend J. J. Roberson on the occasion of his installation as the new president of the Baptist Ministers Association of Houston and Vicinity.

H.C.R. 169 - (Shapiro): Congratulating Charles F. Williams on being elected the grand exalted ruler of the Benevolent and Protective Order of Elks.

S.R. 1154 - By Zaffirini: Congratulating Patrick F. Tracy on the occasion of his newly acquired American citizenship.

ADJOURNMENT

On motion of Senator Henderson, the Senate at 4:34 p.m. adjourned until 11:00 a.m. tomorrow.

APPENDIX

REPORTS OF STANDING COMMITTEES

The following committee reports were received by the Secretary of the Senate:

May 29, 1993

JURISPRUDENCE — **H.B. 1268** (Amended)

STATE AFFAIRS — **H.B. 1926**

SIGNED BY GOVERNOR

(May 25, 1993)

S.C.R. 62
S.C.R. 81
S.C.R. 83
S.C.R. 92
H.C.R. 68
H.C.R. 72
H.C.R. 129
H.C.R. 137
H.C.R. 142

(May 26, 1993)

H.B. 409 (Effective September 1, 1993)
H.B. 1143 (Effective September 1, 1993)
S.B. 623 (Effective September 1, 1993)
S.B. 1068 (Effective November 2, 1993)
S.B. 1373 (Effective immediately)

(May 27, 1993)

H.B. 211 (Effective August 30, 1993)
H.B. 395 (Effective September 1, 1993)
H.B. 1011 (Effective August 30, 1993)
H.B. 1298 (Effective December 1, 1993)
H.B. 1502 (Effective August 30, 1993)
H.B. 1662 (Effective September 1, 1993 and October 1, 1993)
H.B. 1876 (Effective September 1, 1993)
H.B. 1972 (Effective August 30, 1993)
H.B. 2264 (Effective August 30, 1993)
H.B. 2827 (Effective September 1, 1993)
H.B. 2856 (Effective August 30, 1993)
H.B. 2620 (Effective August 30, 1993)

SENT TO GOVERNOR

(May 29, 1993)

S.B. 86
S.B. 251

EIGHTY-FIRST DAY

(Sunday, May 30, 1993)

The Senate met at 11:00 a.m. pursuant to adjournment and was called to order by Senator Armbrister.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Carriker, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Lucio, Luna, Madla,